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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CAL/EPA BUILDING

1001 I STREET

2ND FLOOR

BYRON SHER AUDITORIUM

SACRAMENTO, CALIFORNIA

TUESDAY, APRIL 21, 2009

9:30 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Ms. Sheila Kuehl

Mr. John Laird

Ms. Carole Migden

Ms. Rosalie Mul

STAFF

Mr. Mark Leary, Executive Director

Mr. Elliot Block, Chief Counsel

Ms. Kristen Garner, Executive Assistant

Mr. Howard Levenson, Deputy Director, Permitting and
Enforcement Division

Mr. Jon Myers, Assistant Director, Office of Public
Affairs

Mr. Bill Orr, Division Chief, Cleanup, Closure, and
Financial Assurances Division

Mr. Ted Rauh, Program Director, Waste Compliance and
Mitigation Program

ALSO PRESENT

Mr. Glenn Acosta, LA County Sanitation District

Mr. Arthur Boone, Northern California Recycling
Association

Mr. Evan Edgar, California Refuse Removal Recycling
Council

Mr. Chuck Helget, Republic Services
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Magavern, Sierra Club California

Mr. Mike Mohajer, Los Angeles County Solid Waste
Management Committee

Mr. Herman Robbins, Kern County Waste Management
Department

Mr. Scott Smithline, Californians Against Waste

Mr. Larry Sweetser, Rural Counties ESJPA

Mr. Chuck White, Waste Management

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: Welcome to the April Board
3 meeting of the Integrated Waste Management Board.

4 I'd like to call the meeting to order and ask
5 Kristen if you can call the roll, please?

6 EXECUTIVE ASSISTANT GARNER: Kuehl?

7 BOARD MEMBER KUEHL: Here.

8 EXECUTIVE ASSISTANT GARNER: Laird?

9 BOARD MEMBER LAIRD: Here.

10 EXECUTIVE ASSISTANT GARNER: Migden?

11 BOARD MEMBER MIGDEN: Here.

12 EXECUTIVE ASSISTANT GARNER: Mulé?

13 BOARD MEMBER MULÉ: Here.

14 EXECUTIVE ASSISTANT GARNER: Brown?

15 CHAIRPERSON BROWN: Here.

16 Any ex partes to report?

17 As I'm doing the same, I will remind those in our
18 audience that if you have a cell phone, please turn it to
19 the vibrate mode.

20 There are speaker slips in the back of the room.

21 If anyone would like to speak on any item that's on the
22 agenda, please fill out a slip and bring it to Kristen.

23 And like to ask everybody to stand for the Pledge
24 of Allegiance.

25 (Thereupon the Pledge of Allegiance was

1 recited in unison.)

2 CHAIRPERSON BROWN: Thank you.

3 Now this is becoming far too frequent or a very
4 bad habit. We seem to be having a large number or quite a
5 few of our key staff in the retirement phase of their
6 life. And not sure if I'm happy about all that. But
7 we're starting a retirement of the month club, I guess.

8 Be that as it may, we're here today to honor
9 another long time employee, who is going on to other
10 things.

11 John Bell, could you please join us? Come on
12 forward.

13 John has worked at the California Integrated
14 Waste Management Board for more than 31 years, which is a
15 pretty amazing, amazing tenure here. He started in 1980
16 supervising the first federal open dump inventory for
17 California and then went on in 1984 to conduct field
18 training for Waste Board enforcement staff where he
19 conducted site tours, visiting a series of more than 30
20 sites in each complete tour. He also conducted special
21 tours for Board members, VIPs, and foreign visitors.

22 John developed and managed the Waste Board's
23 enforcement program starting in 1980 through 1997 and was
24 responsible for many of the enforcement tools and
25 innovative inspection practices and procedures that are

1 being used today.

2 He is an expert on landfill gas and developed
3 many of the Waste Board's landfill gas programs and
4 activities, including landfill gas training for the Waste
5 Board staff, local enforcement agencies, and landfill
6 personnel. He has been the Waste Board's landfill gas
7 coordinator -- I'm not sure that's a great thing -- more
8 recently, which has been particularly important as the
9 landfill gas regulations were revised to include active
10 sites.

11 We could go on and on about the programs John has
12 been involved in. But suffice it to say that we commend
13 and thank you, John, for your many years of service and
14 your dedication to the public health and safety and the
15 environment.

16 We wish you all the best in your future
17 endeavors, and we're happy that we had the opportunity to
18 work with you. We'll definitely miss you. And now we
19 have a resolution that we'd like to present and then do
20 some photos.

21 I'll read the highlights. The print is very
22 small.

23 "Whereas, John Bell has worked at the
24 California Integrated Waste Management Board for
25 more than 31 years providing efficient delivery

1 of environmental enforcement and ensuring the
2 protection of public health and safety.

3 "Whereas, starting in 1980, John supervised
4 the first federal open dump inventory for
5 California, including the evaluation and
6 compliance of federal standards for active and
7 closed landfills in California, with a quality of
8 the final inventory being recognized by federal
9 auditors resulting in the granting of an
10 additional \$500,000 to the Waste Board.

11 "Whereas, John chaired the Waste Board's
12 first Landfill Gas Technical Advisory Group with
13 experts from industry and government and has been
14 the person responsible for the development of
15 several additions and revisions to the landfill
16 gas regulations, including the application of the
17 landfill closure and monitoring requirements to
18 active sites.

19 "Now, therefore be it resolved, that the
20 California Integrated Waste Management Board
21 hereby commends John for his many years of
22 dedication to the principles and purposes of this
23 Board and his efforts to protect the environment,
24 public health, and safety, and wishes him well in
25 his future pursuits."

1 Those are just the highlights. So thank you so
2 much. We will definitely miss you.

3 MR. BELL: Well, Madam Chair and members, it's a
4 great honor to receive this recognition for my work and to
5 take that into my retirement.

6 I thought I'd dress appropriately for my
7 retirement today. But thank you very much.

8 CHAIRPERSON BROWN: Thank you.

9 (Applause)

10 (Thereupon a brief recess was taken.)

11 CHAIRPERSON BROWN: Mark.

12 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
13 Chair. Good morning. Good morning, members.

14 I wasn't going to have one and I have a late
15 breaking development here that I wanted to touch on real
16 quickly, and actually pass on acknowledgements and
17 appreciation for the work of Howard Levenson and Board
18 Member Rosalie Mulé in keeping our oar in the water in
19 terms of the Federal American Recovery and Reinvestment
20 Act 2009. The federal legislation, otherwise known as the
21 Stimulus Plan, has many benefits and a lot of money for a
22 number of different projects. We've been investigating
23 fairly rigorously of late the opportunities for our
24 stakeholders, cities and counties and the industry, for
25 potential benefits that their management of waste in an

1 environmentally safe way, productive way, and a way that
2 actually produces energy this money could work for them.

3 And so Howard and I and Rosalie participated in a
4 conference call this morning with the executive director
5 of the Solid Waste Association of North America, John
6 Skinner, and got his perspective on how this federal money
7 is going to flow and how it's going to work and how it
8 affects the solid waste sector. And thanks to him and
9 Howard's continued work and the work of his staff, we have
10 a better understanding. Not a clear pathway yet, but a
11 better understanding of how our stakeholders may link into
12 this federal money.

13 I wanted to let you know we are working on and
14 will continue to work on it. And as we see the pathway a
15 little more clearly, I will inform you better how these
16 opportunities will come to pass for us and our
17 stakeholders.

18 And I'd be happy to offer Howard to answer any
19 questions on that subject.

20 Other than that, my Executive Director report
21 concludes.

22 CHAIRPERSON BROWN: So you're knee deep or hip
23 deep.

24 We also participated in a collaborative meeting
25 with the CEC and are working with the Energy Commission

1 and the ARB on funding in that avenue as well. I would
2 say he's now hip deep.

3 EXECUTIVE DIRECTOR LEARY: At least.

4 CHAIRPERSON BROWN: At least. Thank you, Mark.

5 Okay. I will quickly give an overview of where
6 we are in the agenda and then proceed.

7 Item 5 and 8 are on the consent agenda.

8 Any members wish to pull any items from the
9 consent agenda?

10 Can I have a motion?

11 BOARD MEMBER MULÉ: I'd like to move the consent
12 agenda.

13 BOARD MEMBER LAIRD: Second.

14 CHAIRPERSON BROWN: It's been moved by Member
15 Mulé and seconded by Member Laird.

16 Kristen, can you call the roll?

17 EXECUTIVE ASSISTANT GARNER: Kuehl?

18 BOARD MEMBER KUEHL: Aye.

19 EXECUTIVE ASSISTANT GARNER: Laird?

20 BOARD MEMBER LAIRD: Aye.

21 EXECUTIVE ASSISTANT GARNER: Migden?

22 BOARD MEMBER MIGDEN: Aye.

23 EXECUTIVE ASSISTANT GARNER: Mulé?

24 BOARD MEMBER MULÉ: Aye.

25 EXECUTIVE ASSISTANT GARNER: Brown?

1 CHAIRPERSON BROWN: Aye.

2 Okay. The consent agenda passes.

3 Items 6, 7, 9, 13, 14, 15, 16, 17, 18, 19 revised
4 and 20 revised are on the fiscal consent. We'll take
5 these up Committee by Committee.

6 For informational purposes, Items 1, 2, 10, 11,
7 and 12 were heard by Committee only.

8 No items were pulled.

9 And we will hear Items 3 and 4 by the full Board.

10 Before we go to fiscal consent -- my apologies.
11 We have one member of the public that would like to make
12 public comment before we get into the bulk of the agenda.
13 I'd like to invite up Mr. Arthur Boone for public comment.

14 MR. BOONE: My name is Arthur Boone. I live in
15 Berkeley. I'm the education leader for the Northern
16 California Recycling Association.

17 I think most you saw in the Chronicle today that
18 the Goldman prizes were given yesterday in San Francisco,
19 \$150,000 to seven people from around the world for their
20 environmental leadership. Three of those people are
21 involved with the GAIA organization in Berkeley. And I
22 think I had a lot to do with getting them to the attention
23 of the Goldman people. And they all basically won awards
24 for fighting incinerators in their home countries; Russia,
25 one was from India, and the other was I can't remember --

1 someplace southeast Asia.

2 The European and American incinerator companies
3 are having a hard time building facilities in the
4 developed world, because we've all recognized incineration
5 is not really a very suitable method to manage scrap
6 materials and takes more energy to make more stuff from
7 virgin materials that we get from burning this stuff in
8 the first place.

9 So I think it's really important from a national
10 and international perspective that a Berkeley organization
11 GAIA has been helpful in bringing to the attention of
12 probably the leading world prize for environmental
13 activism the Goldman prize to bring anti-incineration
14 leaders to the attention. I think that's really
15 important. I wanted you to know that. The newspaper
16 didn't tell that story very well. They focused on Mr.
17 Gore, who made a green speech.

18 The other thing I wanted to say is last Thursday
19 night the Board of the Northern California Recycling
20 Association endorsed and became part of the Cool 2010
21 Coalition, which is the group that was started by Biocycle
22 and the Grassroots Recycling Network a year ago to try to
23 bring to the public's attention the need to get all
24 organic materials, green materials, food materials, and
25 anything that will rot essentially out of the landfills.

1 And in Alameda County, we have a recent
2 development. I don't know if you are aware of this or
3 not, but Gary Wolff, who just left the Water Board to
4 become the head of the Alameda County Water Authority, is
5 now charged with the responsibility. For the first time
6 in California, I believe we have a county-wide Board which
7 has essentially banned all green materials from landfills
8 in Alameda County. We have one large landfill, one medium
9 size. How that's going to get implemented, we haven't
10 figured that out exactly yet. But I think they are
11 working on it. I think it's very important to appreciate
12 we hope Alameda County will continue to lead the way for
13 California in developing waste reduction and recycling
14 policies.

15 The third thing I wanted to distribute to the
16 Board members -- I'm sorry I don't have more copies. As
17 you know, there's been a long fight about how much methane
18 is actually lost in the process at landfills. And there
19 are people who say it can be -- get 99 percent of the
20 methane. We have other people saying we get 20 percent of
21 the methane. I've heard a lot of talk, but I've never
22 seen anything that really laid it out like on page 3 of
23 this handout.

24 This is the US Composting Council. Matt Cotton
25 from Grass Valley was the president of that group. He's

1 done work for you in the past. Very reputable
2 organization. If you look on page 3, there is a chart
3 taken out of a book that was published by a woman from
4 Vienna, Austria that tries to look at the capture rate for
5 methane in landfills. And the interesting part is the
6 part between minus ten and zero is essentially the time at
7 the landfill before the gas collection system is put in
8 place.

9 This is the first time I've ever seen this
10 number. I think it's really interesting. If you try to
11 estimate the space under the curve that's listed as
12 methane, I would estimate about 40 percent of all the
13 methane that's generated in the landfill essentially
14 leaves the landfill before the gas collection system is
15 installed. So that no matter how well the system operates
16 in terms of actually capturing the methane once the gas
17 collection system is installed, we still have to look at
18 all the methane that disappears before it's installed.

19 One of the great arguments against the Glenn
20 Canyon Dam is that half of the water that's impounded
21 there evaporates before it's used. So the question is, is
22 that really the way to do things? So there's a lot of
23 questions involved.

24 But I've never seen this chart before. I think
25 it's very interesting. I think that when landfill people

1 want to get up and say we have a great system, I think
2 they have to defend themselves against this accusation.

3 And the last thing I want to say, I was walking
4 over from the train station this morning, and I walked by
5 the federal building. And this is something I read on
6 the -- I don't know if you've read the quotes on the
7 paving stones there. One says, "Crime is a sociopolitical
8 artifact, not a natural phenomenon. We can have as much
9 or as little crime as we please."

10 There's some of us who think waste is a
11 sociopolitical artifact, not a natural phenomenon. We can
12 have as much or as little of it as we please.

13 So I leave you with those words. Thank you.

14 CHAIRPERSON BROWN: Thank you, Mr. Boone.

15 And now if we have no other comments from Board
16 members, I think we can move to our fiscal consent agenda.

17 I'll invite Committee Chair Mulé to give a
18 Committee Chair's report.

19 BOARD MEMBER MULÉ: Thank you, Madam Chair.

20 We did have quite a few items, and I will go
21 through them for the record.

22 For Committee only, we did hear a presentation on
23 a report of the waste tire study for the California-Mexico
24 border region.

25 The other, we did hear an update on the long-term

1 postclosure maintenance and corrective action and
2 financial assurance activities. We will be hearing two
3 items related to that today to the full Board.

4 We also did have one permit on our agenda, which
5 was a solid waste facilities permit, a composting permit
6 for a facility in San Diego, California. We were very
7 pleased to approve that and put that on consent. We have
8 yet another composting facility which we are expanding,
9 particularly in southern California where these kinds of
10 facilities are desperately needed. So we're pleased with
11 that.

12 Several other items that will be on fiscal
13 consent. There was a Scope of Work for the surveillance
14 equipment to assist our waste tire enforcement effort.
15 Another Scope of Work to conduct the enhanced enforcement
16 and surveillance for waste tires.

17 We did also put on consent the adoption of the
18 proposed revisions to the existing waste tire hauler
19 manifest system.

20 And then, finally, our final fiscal consent item
21 is consideration of grant awards for the local waste tire
22 cleanup and amnesty events.

23 With that, I conclude my report. Thank you.

24 CHAIRPERSON BROWN: Thank you very much, Rosalie.

25 Now we'll move first to fiscal consent Item 6.

1 Ted.

2 PROGRAM DIRECTOR RAUH: Yes, thank you, Chair
3 Brown, Board members.

4 This is Ted Rauh, the Program Director for Waste
5 Compliance and Mitigation Program.

6 Agenda Item 6 is the Consideration of the Scope
7 of Work and an Agreement to Purchase, Support, and Make
8 Available Surveillance Equipment to Assist the Waste Tire
9 Enforcement Program.

10 The agreement is proposed with the California Air
11 Resources Board for \$75,000, and this is the third such
12 agreement between the two agencies to support the Board's
13 and local enforcement agency efforts to reduce illegal
14 disposal of tires throughout the state.

15 Staff recommends the proposed Scope of Work and
16 the California Air Resources Control Board as the
17 contractor.

18 Staff further recommends the Board adopt
19 Resolution 2009-53.

20 And that concludes my presentation.

21 CHAIRPERSON BROWN: Thank you, Ted.

22 Do we have any questions from any members?

23 Can I have a motion?

24 BOARD MEMBER MULÉ: Madam Chair, I would like to
25 move Resolution 2009-53.

1 BOARD MEMBER KUEHL: Second.

2 CHAIRPERSON BROWN: It's been moved by Member

3 Mulé and seconded by Member Kuehl.

4 Kristen, can you call the roll?

5 EXECUTIVE ASSISTANT GARNER: Kuehl?

6 BOARD MEMBER KUEHL: Aye.

7 EXECUTIVE ASSISTANT GARNER: Laird?

8 BOARD MEMBER LAIRD: Aye.

9 EXECUTIVE ASSISTANT GARNER: Migden?

10 BOARD MEMBER MIGDEN: Aye.

11 EXECUTIVE ASSISTANT GARNER: Mulé?

12 BOARD MEMBER MULÉ: Aye.

13 EXECUTIVE ASSISTANT GARNER: Brown?

14 CHAIRPERSON BROWN: Aye.

15 Motion passes.

16 Item 7.

17 PROGRAM DIRECTOR RAUH: Thank you, Board members.

18 Item 7 is consideration of the Scope of Work and

19 an agreement with the California Highway Patrol for

20 \$250,000 to conduct enhanced enforcement, security

21 assistance, education, training, investigative assistance,

22 and surveillance for the Waste Tire Compliance Program.

23 The agreement is funded out of the Tire Recycling

24 Management Fund.

25 Staff recommends the Board approve the proposed

1 Scope of Work and the California Highway Patrol as the
2 contractor.

3 Staff further recommends the Board adopt
4 Resolution 2009-54.

5 That concludes my presentation.

6 CHAIRPERSON BROWN: Thank you, Ted.

7 Any questions?

8 BOARD MEMBER MULÉ: I'd like to move Resolution
9 2009-54.

10 BOARD MEMBER KUEHL: Second.

11 CHAIRPERSON BROWN: It's been moved by Member
12 Mulé, seconded by Member Kuehl.

13 Without objection, we can substitute the previous
14 roll.

15 We'll move next to Item 9.

16 PROGRAM DIRECTOR RAUH: Item 9 is consideration
17 of 36 full and one partial grant award totaling \$2 million
18 for the Local Government Waste Tire Cleanup and Amnesty
19 Event grant Programs.

20 These programs are funded from the Tire Recycling
21 Management Fund.

22 The Board is also being asked to approve the
23 remaining unfunded grant portion and three other grant
24 applications totaling \$75,254, subject to the future
25 availability of funds.

1 A tire fund allocation item that may provide this
2 additional funding is Item 14 and will be heard by the
3 Board a little later in the morning.

4 Staff recommends the Board approve the proposed
5 grant award specified in the Resolution as List A and
6 approve awards to the unfunded grants shown on List B
7 subject to the future allocation of grant funds for this
8 purpose by adopting Resolution 2009-56.

9 That concludes my presentation.

10 CHAIRPERSON BROWN: Thank you, Ted.

11 Any questions?

12 BOARD MEMBER MULÉ: I move Resolution 2009-56.

13 BOARD MEMBER KUEHL: Second.

14 CHAIRPERSON BROWN: It's been moved by Member
15 Mulé, seconded by Member Kuehl.

16 Without objection, we can substitute the previous
17 roll.

18 Move to Item 13. Howard.

19 PROGRAM DIRECTOR LEVENSON: Good morning.

20 CHAIRPERSON BROWN: That jumps Committee. My
21 apologies, Howard.

22 I'd like to thank Member Laird for stepping in
23 and very abely and capably handling that Committee, an old
24 hat.

25 Do you have a Committee Chair's report?

1 BOARD MEMBER LAIRD: Yes, just a brief one.

2 Just for the record, the Chair did say please sit
3 in as Committee Chair. It will be very brief. There
4 won't being many things on the agenda. I think there were
5 12.

6 But the thing I wanted to just reference in the
7 report is we had three informational items at the
8 beginning, and each one was very interesting. We had the
9 third in a series of panels, and it included Wal-Mart, a
10 representative from Starbucks, a representative from
11 Granite Construction, sort of a consortium of builders or
12 building-related entities and then general services.

13 And I closed the hearing by saying if you had
14 told me five years ago I would be sitting in front of
15 Starbucks and Wal-Mart and Granite Construction talking
16 about how they had goals to be sustainable, I would have
17 said you were crazy. And it was a very, very good
18 discussion, and I really appreciated the fact that we did
19 it.

20 Then we had a project of two grad students and a
21 teacher from Chico State where they did a project on
22 looking at a potential lane addition to highway 99 in
23 Chico with tire-derived aggregate. And they walked all
24 the way through it and how it would be done, what the
25 cost, what the benefits were, how they could measure it.

1 And we gave them recognition at the end to the
2 two students. Sheila acknowledged that they were going to
3 have 50-year careers and it could hang on the wall for the
4 whole 50 years.

5 But it was really exciting to see just somebody
6 that hasn't yet come into the system having a vision of
7 change and how to do it.

8 And then the third information report had to do
9 with satellite technology and waste tire piles in the
10 border region. And that was very interesting. They
11 walked through how they did it, the imaging, the follow
12 up. And the net result is they can generally get right
13 now to where the technology is to within 80 percent
14 accuracy of identifying that from that distance. And it
15 was also significant in that they went ten miles on the
16 Mexican side of the border in their work, and that it led
17 to cooperation with the jurisdictions in Mexico. I
18 thought that was a very positive thing to come out of
19 that.

20 And I know that that was totally informational,
21 and the staff will be looking at it just to decide if
22 there is a place to go on that in the future.

23 And then we went through the other items that
24 we're about to consider. We had unanimous votes on every
25 one, which will be evident.

1 And then I just feel obligated to say at the
2 outset that we did bend over backwards on the last two
3 items. They were the ones that somebody came and
4 protested a few months ago. And the staff completely
5 backed up, re-worked in a way that I think that we walked
6 the last mile as a Board. And we have the recommendations
7 in front of us.

8 That concludes my report.

9 CHAIRPERSON BROWN: Great. Thank you very much.

10 I got the one panel. I didn't get the Chico
11 State. I'll have to get a copy of that. But the panel
12 discussion was even fascinating without any visual
13 stimulation. It was very interesting.

14 Okay. Now, Howard, we'll go to Item 13.

15 PROGRAM DIRECTOR LEVENSON: Thank you, Madam
16 Chair.

17 Howard Levenson with the Sustainability Program.

18 And before I go to 13, I just want to acknowledge
19 both Chris Peck and Rosalie Mulé for putting that panel
20 together. And we had a great panel.

21 We are following up with Starbucks already, and I
22 think we'll be able to send one of our staff to the Cup
23 and Packaging Coalition. I'm not sure the exact name.
24 They have a meeting up in Seattle next month. We'll be
25 interacting with them further along those lines.

1 CHAIRPERSON BROWN: What was nice is they
2 developed the hot cup not for their own use, but for
3 industry wide use for anybody who wants to have the
4 technology to use that cup. They're not making it
5 proprietary. So that's beginnings of leadership.

6 PROGRAM DIRECTOR LEVENSON: So Item 13 is
7 Consideration of the Grant Awards for the Rubberized
8 Asphalt Concrete Grant Programs and Conditional
9 Cancellation of the Grant Program Solicitation for the
10 next fiscal year.

11 This action item before you today is asking you
12 to approve grant awards for two of our three recycled
13 asphalt concrete grant programs. These include two
14 applications for the Rubberized Asphalt Concrete Use
15 Program, which is for more of our repeat users and two
16 applications for chip seal program.

17 As you know, we're asking you to fund additional
18 grants in the reallocation item and Item 14, as Ted
19 mentioned. And we also will bring an item to you next
20 month regarding potential use of the fiscal year 2009-2010
21 dollars.

22 But for today, staff recommends Option 1 and the
23 adoption of Resolution Number 2009-49.

24 BOARD MEMBER LAIRD: Madam Chair, I would move
25 that Resolution.

1 BOARD MEMBER MULÉ: Second.

2 CHAIRPERSON BROWN: It's been moved by Member
3 Laird, seconded by Member Mulé.

4 Kristen, can you call the roll?

5 EXECUTIVE ASSISTANT GARNER: Kuehl?

6 BOARD MEMBER KUEHL: Aye.

7 EXECUTIVE ASSISTANT GARNER: Laird?

8 BOARD MEMBER LAIRD: Aye.

9 EXECUTIVE ASSISTANT GARNER: Migden?

10 BOARD MEMBER MIGDEN: Aye.

11 EXECUTIVE ASSISTANT GARNER: Mulé?

12 BOARD MEMBER MULÉ: Aye.

13 EXECUTIVE ASSISTANT GARNER: Brown?

14 CHAIRPERSON BROWN: Aye.

15 That motion passes. Thank you.

16 Howard, move on to Item 14.

17 PROGRAM DIRECTOR LEVENSON: Item 14 is
18 consideration of grant awards to be funded from the
19 reallocation of this year's fiscal year tire recycling
20 management fund.

21 This is really the most encompassing of the
22 funding items that you have before you today. There are a
23 number of different items, including the ones that Ted had
24 on fiscal consent, and the ones that follow this that all
25 feed into this one item regarding allocating some of the

1 available funds to four oversubscribed tire grant
2 programs.

3 This is an annual exercise, because during the
4 course of the year, sometimes we have funds that were
5 allocated by the Board that weren't encumbered in
6 agreements or some of the contracts come in with a lower
7 bid or some grants fall through. Those are all explained
8 in detail in the item.

9 What we are recommending is that you provide
10 additional funding for four programs, the tire-derived
11 product -- considering \$1.8 million of funds for the
12 eligible applicants on the RAC list for some of the local
13 cleanup and amnesty grants and for the other grants that
14 are explained in the item.

15 So we recommend the adoption of Resolution
16 2009-45, which reallocates funds from the fiscal year
17 2008-09 tire fund to select the grant programs that are
18 listed in Attachment 2.

19 BOARD MEMBER LAIRD: Madam Chair, I would move
20 that Resolution.

21 BOARD MEMBER MULÉ: Second.

22 CHAIRPERSON BROWN: It's been moved by Member
23 Laird, seconded by Member Mulé.

24 Without objection, we can substitute the previous
25 roll.

1 Move to Item 15.

2 PROGRAM DIRECTOR LEVENSON: Item 15 seeks your
3 approval of contractor for civil engineering and
4 construction management services, specifically for
5 tire-derived aggregate projects.

6 Staff recommends Option 1 and the adoption of
7 Resolution 2009-46.

8 BOARD MEMBER LAIRD: Madam Chair, I'd move that
9 Resolution.

10 BOARD MEMBER MULÉ: Second.

11 CHAIRPERSON BROWN: It's been moved by Member
12 Laird, seconded by Member Mulé.

13 Without objection, we'll substitute the previous
14 roll on that Resolution and move to Item 16.

15 PROGRAM DIRECTOR LEVENSON: Item 16 is
16 consideration of the Scope of Work and a contractor for
17 the Rubberized Asphalt Concrete Technology Center
18 contract.

19 Staff is recommending the Los Angeles County as
20 the contractor for implementing the Technology Center.

21 And we recommend Option 1 again and adoption of
22 Resolution 2009-47.

23 CHAIRPERSON BROWN: Thank you.

24 BOARD MEMBER LAIRD: And I would move that
25 Resolution, Madam Chair.

1 BOARD MEMBER MULÉ: Second.

2 CHAIRPERSON BROWN: It's been moved again by
3 Member Laird, seconded by Member Mulé.

4 BOARD MEMBER LAIRD: Pretty soon, we should just
5 substitute the previous motion.

6 CHAIRPERSON BROWN: Substitute the previous
7 motion and roll, without objection.

8 Howard.

9 PROGRAM DIRECTOR LEVENSON: Item 17 is
10 consideration of Market Development Revolving Zone Loan
11 for Tri-C Manufacturing. This will be a \$1.5 million loan
12 to finance the purchase of equipment and to build
13 leasehold improvements for expansion of their recycling
14 operation in West Sacramento.

15 For the record, I do want to state that this is
16 not the same Tri-C that the Board has taken enforcement
17 actions against. I want to make sure there is no
18 confusion there.

19 Staff recommends Option 1 and adoption of
20 Resolution 2009-50.

21 BOARD MEMBER LAIRD: I would move that
22 Resolution.

23 BOARD MEMBER MULÉ: Second.

24 CHAIRPERSON BROWN: It's been moved by Member
25 Laird, seconded by Member Mulé.

1 Without objection, we can substitute the previous
2 roll.

3 We'll move next to Item 18.

4 PROGRAM DIRECTOR LEVENSON: Item 18 is a bit of a
5 shocker. Doesn't involve tires, unlike everything else.
6 This is the consideration of the Recycling Market
7 Development Revolving Loan Program application for Pre
8 Plastics. This will be a loan for \$1.427 million for
9 expansion of the plastic recycling operation up in Auburn.

10 Staff recommends Option 1 and adoption of
11 Resolution 2009-51.

12 BOARD MEMBER LAIRD: Madam Chair, I would move
13 the Resolution.

14 BOARD MEMBER MULÉ: Second.

15 CHAIRPERSON BROWN: Been moved by Member Laird,
16 seconded by Member Mulé.

17 Without objection, we'll substitute the previous
18 roll.

19 And then we go next to Mr. Myers.

20 ASSISTANT DIRECTOR MYERS: Good morning, Chair
21 Brown, Board members.

22 Jon Myers, Office of Public Affairs.

23 Item 19 is on fiscal consent for the
24 consideration of a contractor for outreach and education
25 campaign to promote the use of tire-derived products.

1 Staff presented this item at the Market
2 Development and Sustainability Committee last week
3 providing a brief outline on the Scope of Work and
4 selection process.

5 After careful evaluation of the three proposals
6 that met all the criteria from the Request for Proposals,
7 the selection panel determined Katz and Associates as
8 receiving the highest score.

9 According to contracts division, as of this
10 morning, we have not received any written protests.
11 However, protests have until the end of the day to submit.
12 So any resolution, if passed, would be conditional.

13 Therefore, staff recommends conditional approval
14 of Resolution 2009-57 revised for Katz and Associates as a
15 the contractor for the outreach and education campaign to
16 promote the use of tire-derived products. It's a two-year
17 contract for the amount not to exceed \$772,129 from the
18 tire recycling management fund, FY 08-09 and 09-10.

19 BOARD MEMBER LAIRD: Madam Chair, this was and
20 the next item were the items I referred to in the
21 Committee report. And I would move the conditional
22 approval of this Resolution.

23 BOARD MEMBER MULÉ: Second.

24 CHAIRPERSON BROWN: The applicants have until
25 close of business today to file any protests on this item.

1 So given unless we hear a protest, Katz and Associates
2 will be awarded --

3 ASSISTANT DIRECTOR MYERS: Correct

4 CHAIRPERSON BROWN: -- the contract.

5 Any questions on this item?

6 It's been moved by Member Laird, seconded by
7 Member Mulé.

8 Kristen, can you call the roll?

9 EXECUTIVE ASSISTANT GARNER: Kuehl?

10 BOARD MEMBER KUEHL: Aye.

11 EXECUTIVE ASSISTANT GARNER: Laird?

12 BOARD MEMBER LAIRD: Aye.

13 EXECUTIVE ASSISTANT GARNER: Migden?

14 BOARD MEMBER MIGDEN: Aye.

15 EXECUTIVE ASSISTANT GARNER: Mulé?

16 BOARD MEMBER MULÉ: Aye.

17 EXECUTIVE ASSISTANT GARNER: Brown?

18 CHAIRPERSON BROWN: Aye.

19 The motion passes.

20 And we will move next to fiscal consent Item 20.

21 And that is Jon again.

22 ASSISTANT DIRECTOR MYERS: Thank you.

23 Item 20 is on fiscal consent for the

24 consideration of contractor for an outreach and education

25 campaign to promote sustainable tire practices.

1 Staff presented this item as well as at the
2 Market Development and Sustainability Committee last week
3 providing a brief outline of the Scope of Work and the
4 selection process.

5 And again after careful evaluation of the four
6 proposals that met all the criteria for the Request for
7 Proposals, the selection panel determined Edelman
8 Relations as receiving the highest score.

9 As of this morning, no protests have been filed
10 on this contract award. Therefore, staff recommends the
11 conditional approval of the Resolution 2009-58 revised for
12 Edelman as the selected contractor for the outreach and
13 education campaign to promote sustainable tire practices.

14 It's a two-year contract for the amount not to
15 exceed \$2,083,801.50 funded from the tire recycling
16 management fund, FY 08-09 and 09-10.

17 CHAIRPERSON BROWN: Any questions on this item?

18 BOARD MEMBER LAIRD: Move staff recommendation.

19 CHAIRPERSON BROWN: Substitute the previous
20 motion and second.

21 And without objection, we'll substitute the
22 previous roll to follow.

23 Okay. That takes us through our fiscal consent
24 agenda. And we will move next to full Board items. And
25 we'll begin with Item 3. Ted.

1 PROGRAM DIRECTOR RAUH: Thank you, Chair Brown.

2 I'm very pleased to introduce Item 3, which is a
3 Discussion and Board Direction Regarding Further Action on
4 the Proposed Phase 2 Regulations that Address Long-Term
5 Postclosure Maintenance and Corrective Action Financial
6 Assurance.

7 Background for this item includes the staff
8 prepared report entitled, "Long-Term Postclosure and
9 Corrective Action Financial Assurances Staff Analysis and
10 Status Report," dated March 27, 2009.

11 The current proposed Phase 2 regulations --

12 CHAIRPERSON BROWN: Ted, can I interrupt you for
13 just a second?

14 Can we take a brief five-minute break while we
15 get the room re-set and before -- because I know this is
16 going to be a long item. So I'll ask your indulgence. If
17 we can take a five-minute recess, and then we'll come back
18 and start in five minutes.

19 (Thereupon a recess was taken.)

20 CHAIRPERSON BROWN: I think we'll at least start.

21 Ted, thank you very much for taking a brief
22 break. And maybe we'll re-start Item 3.

23 PROGRAM DIRECTOR RAUH: Re-start.

24 CHAIRPERSON BROWN: Re-start.

25 PROGRAM DIRECTOR RAUH: Thank you, Chair Brown.

1 I'm Ted Rauh.

2 Agenda 3 is a Discussion and Board Direction
3 Regarding Further Action on the Proposed Phase 2
4 Regulations that Address Long-Term Postclosure Maintenance
5 and Corrective Action Financial Assurance.

6 Background for this item includes the staff
7 prepared report entitled, "Long-Term Postclosure and
8 Corrective Action Financial Assurances, Staff Analysis and
9 Status Report," dated March 27th of this year, the current
10 proposed Phase 2 regulations and public comment received
11 on the proposed regulations during the 45-day public
12 comment period, and subsequent public hearing.

13 The status report provides an overview of the
14 Board's activities over the last several years as it has
15 worked to address the role that financial assurances play
16 in the Board's regulatory oversight of solid waste
17 landfills.

18 The status report also presents an analysis and
19 discussion of the issues surrounding the need for
20 long-term financial assurances, for postclosure
21 maintenance and corrective action, and the potential
22 financial exposure to the State, in part because it has
23 been some time since the Board considered these issues and
24 because the Board has received additional input from
25 stakeholders.

1 The Board provided staff with regulatory
2 direction for the Phase 2 regulations in July and August
3 of 2008. In providing this direction, the Board indicated
4 that staff should return to the Board after September 2008
5 if pooled fund legislation was not enacted during the
6 2007-08 legislative session.

7 The Board put several regulatory options on hold
8 subject to the expected action by the Legislature. As
9 pooled fund legislation did not pass the Legislature
10 during the 2007-08 session, information on these options
11 is contained in both the status report and will be part of
12 the staff's presentation today.

13 The proposed Phase 2 regulations completed their
14 45-day public comment period on April 13, and a public
15 hearing was completed on April 16th.

16 Staff will provide a summary of the comments on
17 the proposed regulations as part of today's presentation.

18 I'd like to also indicate that we got a letter of
19 support from the Water Resources Control Board staff, just
20 received, and will be provided to you at a later time.
21 But it does detail the very effective working relationship
22 we have had with the Water Board throughout this process
23 in developing the Phase 2 regulations that are before you.

24 In addition, a detailed set of responses to
25 comment has also been provided and is Attachment 7. And

1 given the number of comments, that document was just
2 finished, and there are copies available in the back of
3 the room. And you have been provided copies this morning.
4 We apologize for the short time frame there. But as I
5 said, there's quite a bit of work to do to gather up all
6 the comments of the public hearing on the 16th.

7 To facilitate Board discussion and direction on
8 the Phase 2 regulations, staff proposed the following
9 approach to consideration of this item: First, staff will
10 present the key policy questions that inform the basic
11 approach for the regulations. The questions to be
12 considered include:

13 Are the levels of long-term financial assurances
14 sufficient to protect against financial exposure to the
15 State?

16 How to best protect against divestiture exposure
17 to the State.

18 And whether and how to address the many involved
19 exposures to the State.

20 In presenting these questions, staff will include
21 information on the issues and policy options for Board
22 consideration. Staff will outline how each question is
23 currently addressed in the proposed Phase 2 regulations
24 and will summarize key comments received from stakeholders
25 and other interested parties on the proposed Phase 2

1 regulations as they pertain to these issues.

2 Staff then suggests the Board take public comment
3 on these issues, conduct its own discussion and
4 deliberation on them, and provide staff with guidance on
5 what changes, if any, to the basic structure of the
6 proposed Phase 2 regulations should be made.

7 After receiving this direction, staff will
8 proceed to discuss additional detail changes to the
9 proposed Phase 2 regulations that the Board may consider
10 based on the policy direction it has provided and public
11 comments received.

12 Further stakeholder comments may be appropriate
13 given the direction these detailed changes may take.

14 To facilitate the Board's discussion of the major
15 policy options, staff has developed a set of options that
16 can be placed on the screen to facilitate your discussion
17 at the appropriate time.

18 If this approach meets your approval, Madam
19 Chair, we are prepared to begin with the staff
20 presentation.

21 CHAIRPERSON BROWN: Does anybody have any
22 questions for Ted before we go to staff presentation?

23 BOARD MEMBER KUEHL: But I will interrupt from
24 time to time.

25 CHAIRPERSON BROWN: We're going to do this -- as

1 you go through, if we have questions, we're going to ask
2 you as you go rather than hold them to the end. That way
3 they're more relevant to the topics as they're being
4 discussed.

5 PROGRAM DIRECTOR RAUH: Absolutely. With that,
6 I'd like to introduce Bill Orr, the Chief of the Cleanup
7 Closure and Financial Assurances Division to make the
8 staff presentation.

9 CHAIRPERSON BROWN: Go ahead.

10 (Thereupon an overhead presentation was
11 presented as follows.)

12 DIVISION CHIEF ORR: Thank you, Ted.

13 Good morning, Madam Chair and Board members.

14 For the record, my name is Bill Orr, and I'm the
15 Chief of the Cleanup Closure and Financial Assurances
16 Division.

17 As Ted indicated --

18 --o0o--

19 DIVISION CHIEF ORR: -- we are here this morning
20 for a couple of reasons. One is that it's the next step
21 in the formal rulemaking process. But more importantly,
22 it's an opportunity to further examine the policy
23 questions that remain on long-term financial assurances.

24 Things have changed in a number of ways since the
25 Board provided direction to move ahead with the

1 regulations last summer. As Ted indicated, there's no
2 pooled fund legislation in effect. We have held a number
3 of additional stakeholder workshops and have received
4 additional input from stakeholders.

5 One of the most notable things that we'll be
6 talking about is the issue of divestiture and how it
7 should be addressed separately, and we will go into that.
8 Also some stakeholders have indicated that there's maybe a
9 new public light on the matter of long-term financial
10 assurance given the recent economic downturn that we've
11 experienced since then.

12 We also have now the benefit of the public
13 comments and testimony received during the 45-day public
14 comment period and the public hearing that was held last
15 week.

16 So without further ado, I'd like to move on to
17 the questions here.

18 --o0o--

19 DIVISION CHIEF ORR: We tried to organize the
20 presentation this morning to stay as the big picture
21 policy level, and I'll be taking a look at these three
22 questions and systematically examining each of them.

23 The first one is: Are the levels of long-term
24 financial assurance sufficient to protect against
25 financial exposure to the State?

1 The second one is: How to best protect against
2 divestiture exposure to the State.

3 And the third is: If you've addressed those
4 other two questions, whether and how to address any
5 remaining default exposure to the State.

6 --o0o--

7 DIVISION CHIEF ORR: Starting with the first
8 question, we'll look at the parts dealing with postclosure
9 maintenance and corrective action separately as it looks
10 at reducing the overall exposure to the State.

11 BOARD MEMBER KUEHL: Your three questions all
12 relate to financial exposure to the State.

13 DIVISION CHIEF ORR: That's correct.

14 BOARD MEMBER KUEHL: So I'm assuming the only
15 reason -- no. I don't want to lead you here. But there
16 are reasons why we want postclosure financial assurances
17 that don't all relate to the State's future exposure it
18 seems to me.

19 For instance, whatever the negative environmental
20 impacts of closure happen to be, we want some guarantee
21 that the operators will or whomever will cover the costs
22 associated with mitigating the negative environmental
23 impacts. That is not only about the State's future
24 exposure. So is it not a goal of the financial assurances
25 to also maintain these sites after they're closed?

1 DIVISION CHIEF ORR: Absolutely. And I think
2 what we'll be talking about here in just a minute is what
3 we'll be looking at, what do we estimate that it would
4 cost? How much of that cost is currently covered by the
5 financial assurance mechanism? And then, how much do we
6 expect that might result in defaults, which would be the
7 exposure to the State? So I will be looking at all three
8 of those components.

9 I think the bottom line from our perspective is
10 that someone is going to pay for the work that needs to be
11 done. It's either going to be the landfill operator.
12 It's going to be the local government where that facility
13 is. Or as a last resort, the State. And I think
14 that's -- or if those things are not done, then that would
15 result in a diminished environmental quality based on that
16 work not being done. So we will look at those different
17 components as part of the analysis.

18 BOARD MEMBER KUEHL: So the reason you framed all
19 three of those as relating to the State is because in some
20 assumption of failure at any of these times, since the
21 State would be forced to do something, then the question
22 is how are these assurances protecting the State?

23 DIVISION CHIEF ORR: That's correct.

24 BOARD MEMBER KUEHL: I think it's important to
25 indicate in whatever documents continue to go forward that

1 our main purpose is related to the environmental impacts
2 of closed landfills, not just whether or not the State is
3 going to have to use their money, because I see that as a
4 job of the Board.

5 DIVISION CHIEF ORR: Likewise.

6 Okay. So starting to look at those different
7 components, what I propose to do is that we're going to
8 use the same approach for all of the key questions that we
9 are addressing:

10 To look at what the overall approach is;

11 How we came up with the system costs;

12 How much it costs to do the work;

13 What the exposure is;

14 What the estimated defaults are;

15 Look at how long, in this case, the funding

16 lasts;

17 What do the current proposed Phase 2 regulations
18 address;

19 What are perspectives from various stakeholder
20 points of view;

21 And then finally, the most recent one is a
22 summary of the policy related questions or comments that
23 were received as of last week.

24 --o0o--

25 DIVISION CHIEF ORR: So in its simplest form, the

1 question of how long does financial assurance last, this
2 is based on simply the interest that one can receive if
3 one invests the money in a secure source of revenue.

4 What we've done is we've looked at if the State
5 were to call in a financial assurance mechanism, we would
6 invest it in the surplus money investment fund. And based
7 on the rate of return that we would expect for that money,
8 if you had 49 times the cost estimate, that would
9 essentially allow you to continue postclosure maintenance
10 indefinitely.

11 If you had 43 times the annualized cost estimate,
12 it would essentially cover the 100-year planning period
13 that we used for the rest of the analysis.

14 When you drop down below 30 times, you begin to
15 lose the compounding effect of the interest. By the time
16 you get down to the 15 year rate, you're essentially
17 looking at a year for year as far as how long the money
18 would last.

19 The 8x is highlighted, because that reflects what
20 the current staff proposal that's proposed in the Phase 2
21 regulations is.

22 And it's really a statewide composite based on
23 staff's analysis on how many of the landfills would be at
24 various levels using the step down approach that I'll be
25 detailing in just a second.

1 And then finally, by the time you get down to
2 five years or less, essentially it's just paying for one
3 year of money for each year that's of the cost estimate.

4 BOARD MEMBER LAIRD: Madam Chair, I had a
5 question. And maybe this is as good a place as any.
6 Because what you were just talking about about the
7 investment on the principle is postclosure, right. The
8 money comes at the time of closure, and then you invest
9 it, and then this would be the return; is that correct?

10 DIVISION CHIEF ORR: It could be at closure, or
11 it could be based on whatever the level of financial
12 assurance is at a particular point in time depending on
13 what option the Board selects.

14 So, for example, under the current Phase 2
15 regulations, 15 years into closure, the level of money
16 would be 15 times the cost estimates. So if it was
17 invested at that point, it would generate the 18 years
18 worth of revenue. So it's --

19 BOARD MEMBER LAIRD: I'm sorry. You were taking
20 my question too literally. In general, you're talking
21 about investing the money to have this return sometime
22 after closure?

23 DIVISION CHIEF ORR: Yes.

24 BOARD MEMBER LAIRD: Because a question that's
25 been raised from a lot of the operators is if we went to a

1 higher level of assurance where they're putting aside more
2 cash in the run up to closure, they're very concerned
3 about the loss of use of that amount of money during the
4 time leading to the run up.

5 And the question I had is I know a lot about the
6 different pieces of this. But I'm not an expert on
7 financial instruments. And what I didn't know is there's
8 some option that could be offered to the operators that
9 would allow them to leverage the money for another purpose
10 while they're compiling it, but still at whatever level
11 the Board chooses to in essence set as the level to put it
12 aside, it still protects the cash against that.

13 I was wondering is that something that's been
14 investigated? If we were, for example, to a higher level
15 and push back is we're losing the use of that money during
16 that time, is there something that still allows them to
17 leverage that money, still protects it for the time of
18 closure that might be something we haven't investigated in
19 this process?

20 DIVISION CHIEF ORR: We have investigated that.
21 And let me just make two quick points.

22 First of all, under the current requirements, all
23 landfills are required to be funded at the 30 times level
24 by the time they get to closure. If they are using a
25 non-cash mechanism, they have to do that immediately. If

1 they're using a trust fund, they need to build that up to
2 that level by the time of anticipated closure. So that's
3 already taken into account in terms of the build up rate
4 for the mechanisms.

5 In regard to your second point, yes, the
6 operators can use a combination of mechanisms that would
7 allow them to build up or, in fact, to draw down the money
8 after closure while maintaining the financial assurance
9 level at whatever point the Board selects.

10 So the first part's already taken into account.
11 The second part is there are options, and we can talk
12 about those further.

13 BOARD MEMBER LAIRD: Madam Chair, I think that
14 would be good at some point. And my analogy, which I'm
15 sorry is strange and it's small potatoes, but I had a bad
16 experience with the zoning department of the city I used
17 to be mayor of. And when I was completing a renovation
18 project, they had me set aside a CD for the possible need
19 to construct a carport at some time. And they just were
20 the first signer on it. So I could never cash it in. I
21 was always guaranteeing it.

22 But every time I go to get a loan, they're always
23 willing to count that as an asset that I have that
24 leverages my ability to get the loan. And I'm just
25 looking for something that is like that so that when

1 operators push back, you might be requiring us to set
2 aside a little more. We're really upset we can't use
3 that. Even though we're doing it for the right purpose,
4 to make sure there's no liability that gets transferred to
5 the property -- the taxpayers of the State. Just is there
6 some mechanism like that that eases that to them in the
7 process?

8 And I appreciated what you said. I just wanted
9 to make that point so that at some point when we get to an
10 end, we can just have that on the menu of things that is
11 follow-up or further discussion.

12 DIVISION CHIEF ORR: We can do that.

13 CHAIRPERSON BROWN: We have one more question
14 before you move to the next slide.

15 BOARD MEMBER KUEHL: Looking at all of these
16 options, it seems extremely random to me to look at the
17 number of years that you might need to deposit for,
18 whether or not you can remove money every year or you need
19 to keep it at the same level, and what it means given a
20 completely unknown amount of interest but only guessed at.

21 But is there any way to have any kind of surety
22 about that point at which a closed landfill will no longer
23 require maintenance?

24 DIVISION CHIEF ORR: That's a good question. And
25 we've looked at that a lot in the informal part of the

1 rulemaking process. We have looked around the State of
2 California. We've done a poll of other states. We've
3 looked at various published materials. And the upshot of
4 that is that the answer is no, we don't know yet when that
5 might be. But we believe we will know when we see it.

6 And one of the things that we'll talk about a
7 little bit later that's part of the step down process is
8 what we're calling proactive monitoring. And that's to
9 try to give us a better handle on the trends that are
10 going on both environmentally and from the standpoint of
11 maintenance of the landfill to help inform that decision
12 down the road.

13 But as of now, we don't know when postclosure
14 maintenance will end. Under the law, it's a minimum of 30
15 years in California and as long as the waste poses a
16 threat.

17 BOARD MEMBER KUEHL: Right. Because at any given
18 it point, it seems like water could intrude, even though
19 it never has for x number of years, unless your monitoring
20 continuously shows something that gives you confidence
21 that water won't intrude. And it seems like some of the
22 areas that would maybe give us that solid feeling are not
23 the areas that we can monitor so effectively.

24 So I'm interested as we go along in really
25 understanding. I mean, I can take a range and pick the

1 middle as well, not saying there wasn't scientific
2 evidence for this and that. But it's difficult for me --
3 and perhaps as we go along, I'll hear more -- to have real
4 confidence in a number of years after which there's so
5 much less likelihood that we would need to do maintenance
6 or even corrective action.

7 DIVISION CHIEF ORR: So moving to what really is
8 the heart of staff's analysis, this chart is one that
9 we've been using since at least last July. And at first
10 blush, transferring forward the information from the last
11 slide on to the left-hand column where you see the
12 multiplier for the postclosure financial assurance, at
13 first blush, you might say why don't we just require 43
14 times or 49 times the annualized cost estimate, and then
15 there's no unassured risk to the State?

16 And so as you drop down by the time you get in
17 the 15x, the 8x range, the risk to the State is sort of
18 balanced with the level of assurance. And by the time you
19 get to where we start off if you allow the financial
20 assurance mechanism to be depleted at the end of 30 years,
21 the majority of the costs would be unassured.

22 So if you were to start with that, you might just
23 say, well, why don't we just go with the 43 times
24 multiplier?

25 But if you jump over to the right-hand side,

1 you'll notice if you combine the various types of defaults
2 and divestitures that can occur, then you find maybe a
3 different story. So I'd like to briefly talk about where
4 the numbers along the top came from.

5 There are different types of divestiture. There
6 are three categories we specifically called out. One is
7 the standard divestiture, which essentially was modeled
8 using all 282 postclosure maintenance plan cost estimates
9 using the actual dollars in those cost estimates and then
10 using a series of default rates that were developed by our
11 contractor in December of 2007. And so it essentially
12 represents businesses during the course of business going
13 out of business.

14 But in addition, we identified a couple of
15 additional categories that we felt were particularly
16 vulnerable to defaults of either temporary or permanent
17 nature.

18 So the second category, the rural publics,
19 represents 64 landfills that are located in rural areas of
20 the State that we believe may during the course of time
21 have temporary defaults based on demands by other services
22 in that jurisdiction, maybe a time like today where you
23 have to make hard choices about where your revenue is
24 going to go. And in those rural jurisdictions, they may
25 not have the tax base or the political will to raise their

1 rates to cover those additional costs.

2 Then you also have the single private landfills
3 that essentially are solely owned landfills that after
4 those landfills closed would have essentially no
5 additional source of revenue to pay for their activities.
6 And so the staff analysis would indicate that if the
7 financial assurance level was allowed to drop down, that
8 those particular landfills would likely default toward the
9 end of the 30-year postclosure maintenance period.

10 And then we'll be talking about it a little bit
11 more on a future slide. But the issue of divestiture,
12 which would be the transfer or sale of a landfill to a
13 party that's less able financially or technically to
14 maintain that landfill, becomes an issue when the
15 financial assurance drops down below 15 times the
16 postclosure maintenance cost estimate. Because at that
17 point, the stake in that landfill and the continued
18 maintenance gets to the point where the level is low and
19 there may not be the incentive to continue to maintain
20 that landfill.

21 CHAIRPERSON BROWN: Bill, we have a quick
22 question.

23 Rosalie.

24 BOARD MEMBER MULÉ: Thank you, Madam Chair.

25 Bill, thanks for bringing this part up, because

1 I'm trying to understand this better. The assigning these
2 default rates for single private landfills and for rural
3 publics. In Item 2, which we heard at the Committee
4 meeting on page 11, you had indicated that the default
5 rate for single private landfills, which there's 18 in the
6 State, used was 100 percent after 25 years of postclosure
7 maintenance. I was just wondering how did we come up with
8 that?

9 DIVISION CHIEF ORR: Well, we basically -- we
10 essentially looked at the status quo where if you went
11 down to zero, they would have no ability left based on the
12 lack of a revenue stream to continue to maintain the
13 landfill. And so if the level were to drop down below
14 that certain level, then essentially the first time there
15 was a financial difficulty that they would default and not
16 be able to recover from that.

17 BOARD MEMBER MULÉ: So we're saying every single
18 private landfill in the State will default?

19 DIVISION CHIEF ORR: The 18 that we included,
20 there are some other single private landfills that are
21 affiliated with a large business like a mining company or
22 another type of business where it would have another
23 revenue source, but those ones were not included in this
24 analysis.

25 BOARD MEMBER MULÉ: So you're telling us though

1 that every single one of these 18 landfills will default?

2 There's 100 percent probability.

3 DIVISION CHIEF ORR: We believe so.

4 BOARD MEMBER MULÉ: Okay.

5 And then on the rural publics, the default rate
6 was increased from .17 percent to 1 percent per year. So
7 again, I'm just wondering what the basis was for that
8 increase.

9 DIVISION CHIEF ORR: Well, in the ICF report, it
10 utilized a one percent default rate for single public and
11 single private landfills. And we modified and used that
12 same one percent for the rural landfills regardless of
13 whether or not they were a single landfill or small
14 multiple landfills in that jurisdiction. Because
15 likewise, they would, in our estimation, behave like a
16 single public landfill. So we used -- because of the
17 small tax base, we use the same default rate for single
18 public landfills as other small landfills that might be in
19 that same jurisdiction.

20 BOARD MEMBER MULÉ: Okay. I guess I'm just
21 trying to put all these pieces together. And I know that
22 the public operators have been saying that they have their
23 pledge of revenue so they won't default. So I'm seeing or
24 reading some conflict here. I'm just trying to better
25 understand the gap.

1 BOARD MEMBER MIGDEN: Maybe you want to say why
2 are they all going to default.

3 DIVISION CHIEF ORR: Well, they're not -- the
4 rural public landfills, we don't estimate that they all
5 would default.

6 And if they do default, it would be for those
7 ones a temporary default where they have a difficult time
8 and may end up deferring the maintenance, not that they
9 would disappear. So it's basically a temporary default
10 for those small rural jurisdictions.

11 BOARD MEMBER MULÉ: So the rurals would have a
12 default rate of one percent, but the single privates would
13 have a default rate of 100 percent?

14 DIVISION CHIEF ORR: The single privates, yes.

15 BOARD MEMBER MULÉ: What would be the difference
16 between the two?

17 DIVISION CHIEF ORR: I think the main difference
18 would be the single private companies could go bankrupt
19 and go away. Whereas, the local jurisdictions may go into
20 bankruptcy, but our estimation would be they would recover
21 at some point in the future. And they would not be able
22 to walk away from their responsibilities.

23 BOARD MEMBER MULÉ: Okay. Thank you.

24 CHAIRPERSON BROWN: Okay.

25 --o0o--

1 DIVISION CHIEF ORR: Now, in terms of what the
2 current Phase 2 regulations propose, it would revise the
3 postclosure maintenance financial assurance level to allow
4 for an annual incremental draw down for the first 15 years
5 of postclosure maintenance followed by an optional step
6 down in five year increments for a good performance and
7 participation in a proactive monitoring program to a
8 minimum of five times the cost estimate for the remaining
9 postclosure maintenance period.

10 --o0o--

11 DIVISION CHIEF ORR: Using that as the frame of
12 reference, what would some of the pros and cons be of
13 raising the postclosure assurance level above that current
14 five times -- or eight times effective multiplier?

15 On the pro side, it would increase the percentage
16 of assured costs. It would also according to some
17 stakeholders internalize the true cost of landfilling in
18 the financial assurance mechanisms.

19 It would also in a related fashion incentivize
20 other waste management alternatives. And finally, if the
21 level is above the 15 times multiplier, would minimize the
22 divestiture and default.

23 On the con side, if you raise it too high above
24 the level of assurance that already is being provided, it
25 could prompt early defaults that would actually exacerbate

1 rather than improve the situation.

2 It would lock up revenue that could be used for
3 other beneficial purposes.

4 And finally, stakeholders would indicate that
5 default may be more appropriately and cost effectively
6 addressed by pooling the risk rather than having each
7 landfill having to demonstrate their cost individually.

8 --o0o--

9 DIVISION CHIEF ORR: In terms of the policy level
10 comments in this area that were received in the 45-day
11 comment period and public testimony, one was to increase
12 the level in the proposed regulations to a rolling 30-year
13 financial assurance demonstration throughout the
14 postclosure maintenance period.

15 Other commenters indicated they would prefer that
16 we just stay at the draw down to 15 level for the first 15
17 years and essentially stay there, eliminating the step
18 down approach after that.

19 Other stakeholders indicated that they wanted
20 continued access to their cash in especially a trust fund
21 or enterprise fund to draw down to a lower level of five
22 times the cost estimate, thus eliminating for those cash
23 mechanisms the step down approach.

24 And then finally, we had other stakeholders that
25 indicated we should put a postclosure maintenance

1 contingency back into the regulations. That was something
2 that was considered by the Board prior to noticing the
3 regulations.

4 Are there any other questions before I move on to
5 the corrective action area?

6 --o0o--

7 DIVISION CHIEF ORR: So using a similar approach
8 corrective action, we'll take a look at the different
9 types of corrective action that the staff consider, the
10 financial exposure associated with those different types
11 of corrective action, what the current Phase 2 regulations
12 include, similar perspectives on balancing the pros and
13 cons, and a summary of the comments received.

14 --o0o--

15 DIVISION CHIEF ORR: Now in terms of the
16 analysis, the analysis on corrective action was done quite
17 a bit differently than the postclosure maintenance cost,
18 because we don't have corrective action cost estimates for
19 all 282 landfills.

20 We do currently have about 46 percent of the
21 landfills currently in compliance with the reasonably
22 foreseeable corrective action regulations of the Water
23 Board, but that leaves quite a gap for a complete
24 analysis.

25 So what we did was we developed an empirical

1 approach that was in the contractor's report back in
2 December 2007, and they used various sizes of landfills,
3 small, medium, and large, various types of corrective
4 action, and the costs associated with small, medium, and
5 large corrective action. And that was sort of our base
6 case for corrective action. Known and reasonably
7 foreseeable financial assurances are a subset of that type
8 of corrective action.

9 Environmental stakeholders have continued to
10 suggest that there are other types of corrective action
11 that are not included in that analysis. And we categorize
12 those as major maintenance where you would have a total
13 failure or the need for replacing the entire final
14 cover -- yes.

15 CHAIRPERSON BROWN: We have a question. So hold
16 your thought. We're going to go back.

17 BOARD MEMBER KUEHL: How do you differentiate
18 between corrective action and just annual maintenance?

19 DIVISION CHIEF ORR: Well, in two respects.

20 First of all, the postclosure maintenance, there
21 is an extensive postclosure maintenance plan that details
22 all of the activities that are covered and are required to
23 be done on either an annual basis or a periodic basis.
24 And that plan is then translated into a cost estimate that
25 synthesizes all of that together. And then the level of

1 financial assurance is carried at the multiplier for that
2 cost estimate. So that's how postclosure maintenance
3 costs are defined.

4 Corrective action is when you have something that
5 wasn't contemplated in the postclosure maintenance plan,
6 is not something on a regular periodic replacement basis,
7 but when you actually have a release. Maybe you have a
8 ground water problem. You have a landfill gas problem.
9 You have a significant drainage problem that exceeds the
10 level of maintenance that's described in the plan.

11 So really, the starting place for the difference
12 is what's in the postclosure maintenance plan. If it's
13 not something that's in the postclosure maintenance plan,
14 if it's something that is so significant that it results
15 in something like a formal corrective action order that
16 requires a cleanup or remediation, then those kind of
17 things are what would be included under corrective action.

18 BOARD MEMBER KUEHL: So it could either be
19 something unanticipated and therefore not in the plan --

20 DIVISION CHIEF ORR: It falls in the middle
21 ground. It's reasonably foreseeable but not contemplated
22 in the plan.

23 BOARD MEMBER KUEHL: Or it could have been
24 contemplated in the plan, but at too low a level. So it
25 could be a dollar figure.

1 DIVISION CHIEF ORR: I think a good example is
2 the complete replacement of the final cover. That's not
3 something that's contemplated in the postclosure
4 maintenance plan.

5 What is contemplated in a postclosure maintenance
6 plan would be regrading of sections of the landfill as it
7 settles, possibly the repair of small areas of the cover,
8 if there is a tear in the cover system, or other drainage
9 control features, not the entire failure of the final
10 cover or the wearing out of the final cover. So that's an
11 example of that distinction.

12 BOARD MEMBER KUEHL: I think one of the questions
13 for us is what do we include in terms of postclosure
14 annual maintenance costs? Because those are all
15 reasonably foreseeable in terms of what we need to
16 maintain. And, therefore, we're including that in
17 whatever x we ask for assurances.

18 Other thing we classify as corrective actions
19 could be major maintenance but not -- and reasonably
20 foreseeable but not in the plan because rare --

21 DIVISION CHIEF ORR: Or I think it would be rare.
22 The recurrence frequency. In the case of a major
23 maintenance, we used a probability of having to replace
24 the final cover once every 200 years. If it was included
25 in the cost estimate for maintenance -- for postclosure

1 maintenance by the regulation, you would have to cost it
2 like you were replacing it every 30 years. And we believe
3 that that sort of takes it beyond the periodic to the
4 contingent activity.

5 BOARD MEMBER KUEHL: What's the current mechanism
6 for corrective actions?

7 DIVISION CHIEF ORR: The current mechanism for
8 corrective action that's proposed in the Phase 2
9 regulations actually --

10 --o0o--

11 DIVISION CHIEF ORR: I'll just go there.

12 What's currently included in the regulations is
13 to expand the use of the reasonably foreseeable corrective
14 action assurance that's provided to the regional Water
15 Board. Essentially, that one is currently only water
16 quality related, fairly narrowly construed.

17 But staff's analysis in working with the Water
18 Board is that what's called a pump and treat where you
19 have a ground water problem that takes years to correct
20 would probably be the most expensive corrective action
21 compared to, say, a landfill gas problem.

22 And so rather than requiring our own separate
23 corrective action plan that would have to consider a whole
24 range of possible corrective actions, what we moved ahead
25 with in the regulations is relying on the cost estimate

1 that was prepared for that most expensive water quality
2 related corrective action as the basis for the costs.

3 What the regulations then propose is that you
4 would use that same level of assurance if you had a
5 landfill gas problem, if you had a drainage problem,
6 flooding problem that was beyond that covered in the
7 postclosure maintenance plan. And we also then propose
8 that it be replenished within five years of its use to
9 ensure that the next time there might be a corrective
10 action if it's used that the money or the assurance would
11 be back in place, which is something that the regulations
12 do not currently include. The regulations --

13 BOARD MEMBER KUEHL: Does this beef up then the
14 amount of money that must be put into the corrective
15 action fund?

16 DIVISION CHIEF ORR: Well, let me just say it
17 would beef it up in probably two ways.

18 One is that right now the compliance rate is
19 about 46 percent of the landfills have their reasonably
20 foreseeable corrective action amount in place. We would
21 anticipate with us including that as part of our
22 regulations within the next five years or so that we
23 should approach 100 percent compliance.

24 We've already increased from about 28 percent to
25 about 46 percent since we've been talking about it in the

1 last year or so. So we see that improving. So from that
2 standpoint, yes, it would go up, because we would increase
3 the compliance rate.

4 BOARD MEMBER KUEHL: If I'm putting \$20 into the
5 corrective action fund for water-related corrective
6 actions now, the regulations do not contemplate I would
7 put in more than \$20, even though I'm now going to be
8 including things like, you know, migration of landfill gas
9 that doesn't go through water?

10 DIVISION CHIEF ORR: That's correct.

11 BOARD MEMBER KUEHL: It goes into the air. It
12 would still be 20 bucks.

13 DIVISION CHIEF ORR: Well, a million bucks.

14 BOARD MEMBER KUEHL: I understand. It's all the
15 same.

16 DIVISION CHIEF ORR: It would be under the same
17 level of assurance.

18 The other thing to point out is the first line of
19 defense is the operator is responsible for doing that work
20 in the first place without touching their financial
21 assurance mechanism.

22 So really, the financial assurance mechanism is
23 only intended as a safety net, not as the primary tool for
24 performing those corrective actions.

25 BOARD MEMBER KUEHL: But the operator has closed

1 the landfill. Where's the new money come from, even to
2 replenish it in five years?

3 DIVISION CHIEF ORR: That's where the default
4 rates we were just talking about come in. Those same
5 default rates for single private landfills that have no
6 other revenue stream, those kind of issues also cross over
7 to corrective action. And that was the slide I just
8 skipped over.

9 BOARD MEMBER KUEHL: Sorry. You can go back to
10 it if you'd like.

11 DIVISION CHIEF ORR: So this is a similar
12 analysis that was done on the different types of
13 corrective action.

14 Like I indicated, the base corrective action
15 utilized the model that was developed by the contractor.
16 And these are the defaults that were modeled based on
17 small, medium, large landfills, small, medium and large
18 corrective actions.

19 Of the 18-hundred-million dollars over 100-year
20 period, about 134 million of that is currently assured
21 through the reasonably foreseeable corrective action
22 amounts. That doesn't really tell the full story, because
23 as I've indicated, those amounts are required to be
24 replenished over time.

25 The second category is the major maintenance.

1 What staff has been grappling for some time on how to
2 analyze where you may need to replace the entire final
3 cover. And so what we did is working with our engineering
4 staff used the cost to close the landfill as a surrogate
5 for replacing the final cover. We have the information in
6 our files for all 282 landfills. If you summarize that
7 information for all 282 landfills, that would amount to
8 about \$2.3 billion. But because we're looking at 100-year
9 period, not all of the landfills are going to be closed
10 within the first 100 years. And using a probability of
11 once in every 200 years, you further reduce that. So our
12 estimated system cost for major maintenance was \$700
13 million for that 100-year period.

14 Then finally we said, well, if there's something
15 beyond that that's not covered either by the base
16 corrective action or the major maintenance, you're going
17 to have maybe a site that goes bad every number of years.

18 So we said, what if there's \$100 million
19 corrective action on top of everything else, what would
20 that look like? So that presented a system cost over the
21 course of 100 years of \$500 million, which in our view
22 would be all 100 percent default cost. If an operator
23 could pay for it, this really wouldn't even come into pay,
24 because that would be the first line of defense. This
25 would be five corrective actions where the operator or

1 operators would be unable to pay for them. And so that's
2 the basis for these different levels that we looked at for
3 corrective action.

4 BOARD MEMBER LAIRD: If I can ask a quick
5 question, because under our definition in a previous slide
6 under extraordinary you had acts of God. And you and I
7 talked in a private meeting over the fact that I was on
8 the Board of a landfill operator at the time we had a
9 major earthquake, and you went down and looked at it
10 afterwards. And our big impact was 60 percent of our
11 downtown falling down and a lot of it going into the
12 landfill. But it wasn't unsafe conditions in the landfill
13 due to the earthquake.

14 Do you have any experience with closed landfills
15 and seismic activity, or are there some bad experiences
16 that have happened because of acts of God?

17 DIVISION CHIEF ORR: Well, yes. We have fairly
18 extensive experience. After several earthquakes, that's
19 probably our largest after the Loma Prieta earthquake,
20 after the Whittier Narrows earthquake in Southern
21 California, and after the San Fernando earthquake, we
22 worked with surveying the local enforcement agencies and
23 sending teams of folks down to the landfills to inspect to
24 see what kind of damage occurred. And most of it was very
25 surficial damage.

1 It's a little bit difficult to look at say a
2 lined landfill and see what's going on there, but you can
3 look at the monitoring results that occur after that. And
4 overall, the landfills on earthquakes have performed quite
5 admirably. There have been mostly landfill gas header
6 lines that tend to crack. There's also some settlement
7 that doesn't look all that much different than the kind
8 that would routinely occur, but overall they tend to
9 perform pretty well.

10 The other types of acts of God would include
11 floods where you would have material water running onto
12 the site or runoff where you had a storm that would exceed
13 the design capacity of the landfill. So those were some
14 of the other types of acts of God that we considered. And
15 we do have experience with those as well. And again there
16 have been storms that have exceeded the design that have
17 created problems at landfills, and they've been fixed.

18 BOARD MEMBER LAIRD: Thank you.

19 CHAIRPERSON BROWN: We have another question,
20 Bill.

21 BOARD MEMBER KUEHL: Bill, I want to return, if I
22 may, to the question about expanding to include non-water
23 related corrective actions. I want to understand the
24 basis, if there is one, for deciding that it is not likely
25 necessary to have more in the corrective action fund.

1 Two questions. Could the cost of a non-water
2 related corrective action be potentially greater than the
3 cost of a water-related corrective action?

4 And if you have a water-related corrective
5 action, isn't it likely you'd also need the non-water
6 relate corrective action? I mean, there would be some
7 relationship simultaneously.

8 DIVISION CHIEF ORR: Well, there's a couple of
9 parts to your question. I'll take the bits.

10 I think in terms of the thinking that went into
11 it, I think the key things are trying to minimize the cost
12 of developing a separate plan to articulate a full suite
13 of non-water quality corrective actions versus what that
14 would show you and how much more you would need to set
15 aside.

16 So essentially what the regs as propose reflect
17 is trying to minimize the impact to the operators of
18 having to develop a separate non-water quality corrective
19 action plan and cost estimate.

20 Now, it's fully within the Board's authority if
21 you want to augment something on top of that if you chose,
22 and that's presented in the options that we'll be getting
23 to later on. But that was essentially the thought process
24 is to minimize the paper and maximize the effectiveness of
25 the program. And so that was sort of the balance that we

1 were striking there.

2 There are some instances like, for example, if
3 the Board decided to lump in major maintenance to be part
4 of that reasonably foreseeable corrective action, staff
5 believes in most instances that that would be more
6 expensive than the water quality corrective action. So it
7 would depend on where you drew that line. But that's
8 essentially how we came up with it and some things that
9 might be more expensive.

10 In terms of landfill gas, it's not a clear line.
11 In fact, what we found is that in many instances the
12 ground water problem is actually caused by landfill gas.
13 So it's an area of mutual interest between the Water Board
14 and the Integrated Waste Management Board and the local
15 enforcement agencies.

16 BOARD MEMBER KUEHL: What about the Air Board?
17 Do they have any jurisdiction over emissions into the air
18 caused by closed landfills?

19 DIVISION CHIEF ORR: They do. And they exercise
20 that under their own authority both at the federal level
21 under the Clean Air Act and also under the California air
22 laws.

23 That issue is something that is touched on in
24 Agenda Item 4 as a possible statutory change. So we can
25 cover that a little bit more there.

1 BOARD MEMBER KUEHL: Thank you.

2 CHAIRPERSON BROWN: Thank you, Bill. Keep going.

3 DIVISION CHIEF ORR: We talked about this.

4 --o0o--

5 DIVISION CHIEF ORR: So moving on to the
6 perspectives in terms of increasing the types of
7 corrective action beyond those that are currently covered
8 under the reasonably foreseeable corrective action
9 financial assurance, on the pro side, for doing something
10 more, some stakeholders say that the frequency costs and
11 default rates that staff have been using are too low,
12 therefore you should do more.

13 They also indicate that the 15-year track record
14 that we analyzed as part of our validation of the default
15 rates is too short a period of time and is not really a
16 good indicator of future performance, particularly in the
17 distant future as landfill systems may wear out.

18 They also continued to relate that major
19 maintenance and extraordinary corrective action are not
20 currently included in the Phase 2 rulemaking.

21 On the con side, other stakeholders indicate that
22 the frequencies, costs, and default values that we've been
23 using in our analysis are too conservative; that modern
24 landfills will actually perform better than historical
25 record indicated, particularly ones that are fully lined,

1 of which there are only a handful currently; and that
2 reasonably foreseeable corrective actions are not really
3 even needed in the first place for non-water quality
4 assurance.

5 --o0o--

6 DIVISION CHIEF ORR: In terms of the comments
7 that were received on the Phase 2 rulemaking -- and a lot
8 of these complement the stakeholder perspectives that I
9 just covered that we have not addressed major maintenance
10 or catastrophic failure:

11 That we've expanded the use of assurance without
12 an additional amount, which is the point Board Member
13 Kuehl was just talking about;

14 How will the mechanism be replenished after
15 closure, which I think we've already touched on;

16 And then the difference between corrective action
17 and postclosure maintenance activity is not clear;

18 In addition to the discussion we've already had
19 here, staff has developed white papers throughout the
20 course of the process that are included as an appendix to
21 the status report document that's an attachment to this
22 item.

23 CHAIRPERSON BROWN: Okay. We have a question.

24 BOARD MEMBER KUEHL: In terms of how the
25 mechanism will be replenished after closure -- I may have

1 been asking a question and not hearing the answer. But
2 if, for instance, I were to favor a rolling approach,
3 which there's always 30 years' worth of money in the fund,
4 and assuming the interest rate is as magnanimous as it is
5 now, which would probably not be sufficient to draw down
6 and do regular maintenance and leaving 30 years in the
7 fund, what was the replenishment?

8 DIVISION CHIEF ORR: Well, let me just speak
9 to -- let me separate the postclosure maintenance account
10 from the corrective action amount. We try to keep those
11 separate, because we don't want you using up all of your
12 money on a corrective action for your long-term
13 maintenance. So the multiplier effect isn't germane for
14 this piece.

15 But essentially what the replenishment would be
16 is if you need to use it to pay for your corrective action
17 or if the State needed to use it to clean up the site,
18 then the operator would be obliged to replenish that
19 within five years --

20 BOARD MEMBER KUEHL: I see.

21 DIVISION CHIEF ORR: -- or they could request an
22 extension with the approval of the three -- or actually
23 the two regulating agencies: The Water Board and the
24 Waste Board. And so that would be their obligation.

25 If they're unable to do that, then it would

1 become an enforcement matter. And that's part of the
2 default values that have already been taken into account
3 in analyzing how frequently that might be. They would be
4 obliged to replenish it within five years unless extended.

5 BOARD MEMBER MIGDEN: Either agency could extend.

6 DIVISION CHIEF ORR: Had to be both. The Water
7 Board and the Waste Board would both have to agree with
8 the extension.

9 BOARD MEMBER MULÉ: Right.

10 CHAIRPERSON BROWN: Okay. Proceed for now.
11 We'll just pepper you with questions as we go.

12 --o0o--

13 DIVISION CHIEF ORR: Now we are to the second
14 question.

15 So depending on what level of financial assurance
16 the Board selects in the final analysis and whether you
17 want to stay where we are or raise it, the question of how
18 to best protect against divestiture may go away. We'll
19 talk briefly about the combined divestiture exposure, the
20 regulatory options, the perspectives in this case, and a
21 summary of comments received.

22 --o0o--

23 DIVISION CHIEF ORR: Now, this chart, while it
24 looks like the last one that you saw, I've modified this
25 one to hone in just on the issue of divestiture. So

1 that's the colored part in the lower right-hand side of
2 the slide. And staff's analysis is that when the
3 postclosure maintenance level drops below the 15 years, it
4 becomes an issue.

5 Now, the other point I wanted to make here is
6 this is a combined postclosure maintenance and corrective
7 action table to show the overall exposure levels.

8 And the thing that's worth noting here is that in
9 our estimation that the corrective action divestiture is
10 actually dependant on postclosure maintenance financial
11 assurance level. So that if the financial assurance level
12 for postclosure maintenance is 15 years or higher, it goes
13 away both for postclosure maintenance and for corrective
14 action. If, however, the postclosure maintenance level
15 drops below that, then the divestiture issue becomes
16 problematic both for postclosure maintenance cost and for
17 corrective action.

18 --o0o--

19 DIVISION CHIEF ORR: Now, in terms of the
20 regulatory options, first of all, this is not currently
21 addressed at all. The divestiture issue, the level of
22 financial assurance to address divestiture is not fully
23 addressed in the current regs.

24 So some options that the Board could consider
25 would be establishing a minimum postclosure maintenance

1 assurance level of at least 15 times the cost estimate.
2 Another alternative that's been discussed is adding a
3 step-up provision to that 15 times level for the transfer
4 or sale to a new buyer to assure that that new owner has
5 the financial wherewithal that you would expect from an
6 operator that had previously been at the 15 times level.
7 We believe that would be sufficient to largely head off
8 divestiture of the landfill to a party that's not
9 financially able to continue with the maintenance.

10 The other option that has come up under that is a
11 possible waiver for a buyer like a solid waste management
12 company with a proven track record to have to go up to
13 that 15 times level.

14 --oOo--

15 DIVISION CHIEF ORR: In terms of the pros and
16 cons dealing with divestiture default, in most levels of
17 assurance, divestiture represents the largest single piece
18 of exposure to the State. There is general agreement
19 among the stakeholders -- this is one of the areas where
20 there was general agreement -- that divestiture should be
21 addressed separately from a pooled fund for one thing and
22 possibly have separately from the level of assurance. So
23 we've presented a couple of options for that.

24 The cons are that especially public landfills
25 indicate they see divestiture as largely a problem of

1 private landfills. However, we do know there are some
2 public landfills that sell to private concerns as well.
3 There are several instances that have occurred already.

4 And that current financial assurance framework is
5 already sufficient to address the divestiture issue.

6 --o0o--

7 DIVISION CHIEF ORR: Now, as I indicated, there
8 weren't a lot of comments on the Phase 2 regs, because it
9 doesn't really directly address divestiture. But there
10 were some questions about what the basis for the
11 divestiture default rate was. And also a comment that
12 public moneys should not be used to fix what they view to
13 be a private problem.

14 In terms of that divestiture of default rate, I
15 don't recall if I touched on that one earlier. But,
16 essentially, we used a twelve percent per year default
17 rate based on the start-up rate by the small business
18 administration over a ten-year period as basis for that.

19 BOARD MEMBER MULÉ: Madam Chair.

20 Bill, I was just wondering, I know you use that
21 rate. But didn't ICF in the report they used another
22 rate? Didn't they use some other rates?

23 DIVISION CHIEF ORR: The ICF report really didn't
24 identify the issue of divestiture. The single privates,
25 the rural publics, and the divestiture were all things

1 that came out through the course of stakeholder workshops
2 and staff analysis.

3 BOARD MEMBER MULÉ: Okay. I'm just wondering
4 what the basis was to use that small business rate.
5 Because for me, I see landfills as being highly
6 capitalized up front. So you know, they're not a small
7 business.

8 DIVISION CHIEF ORR: Well, essentially, this
9 would not be for the development or operation of a
10 landfill. This would really kick in according to the
11 analysis when the landfill closed and was no longer
12 generating revenue and was sold to a non-solid waste
13 company. So it really doesn't reflect the capitalization
14 of landfills. It represents who they may sell to or who
15 that party may sell to down the line after the landfill
16 closes.

17 BOARD MEMBER MULÉ: Okay. So I just don't see
18 that as a small business. I'm just having trouble.

19 DIVISION CHIEF ORR: There are landfills that
20 have junkyards on them. There are landfills that have
21 developed into office parks. There are landfills that are
22 developed into compost facilities.

23 BOARD MEMBER MULÉ: Parks, baseball fields.

24 DIVISION CHIEF ORR: Yeah. I think the
25 perspective that we had in selecting that is while that

1 may be able to be a growing concern for that business
2 type, the ability to have sufficient revenues to attend to
3 the ongoing postclosure maintenance and/or corrective
4 action, if they are not required to have a certain level
5 of financial assurance, would be in question.

6 CHAIRPERSON BROWN: Another question.

7 BOARD MEMBER KUEHL: Just a follow-up on that, a
8 couple of scenarios that I have to think about.

9 Are you aware of rental agreements that operators
10 have entered into after closure?

11 DIVISION CHIEF ORR: Well, there's a whole host
12 of arrangements, everything from leases, various
13 postclosure land uses, sales. The ones that we're most
14 concerned is where the control -- change in control would
15 occur. If there is somebody that's leasing or renting,
16 the obligation to maintain the landfill stays with the
17 landfill owner/operator.

18 BOARD MEMBER KUEHL: Always? I mean, a person
19 could be totally foolish to lease the land and take the
20 liability. But I just wonder whether you're aware of any
21 at least attempts by landfill operators if closed to say,
22 hey, you're renting. And as an aspect of the rental
23 agreement, 50 cents off if you take the liability.

24 DIVISION CHIEF ORR: Well, they can do that
25 between themselves. What we do is we focus on one party

1 that is responsible to the State. So we tried not to get
2 into the middle of lease agreements or rental agreements.
3 What we essentially are looking at is who's responsible
4 for maintaining that assurance to the State.

5 BOARD MEMBER KUEHL: Do we have the ability now
6 to say we don't care if you sell it or not, you're
7 responsible?

8 DIVISION CHIEF ORR: No, we don't. We don't have
9 the statutory authority to keep previous owners and
10 operators responsible. And that's one of the statutory
11 options that we can discuss in the next item.

12 BOARD MEMBER KUEHL: If they lease it, is there
13 any questions that we can continue, even if they agree to
14 transfer the liability or responsibility? Do we have the
15 ability to say under a lease agreement that the landfill
16 operator continues to be the responsible party?

17 You're all looking at the lawyer.

18 CHIEF COUNSEL BLOCK: The way our statute is
19 worded, it's current owners and operators that are
20 subject. So that's why Bill is saying when there's an
21 actual sale, you would have somebody that was no longer
22 the current owner with a lease.

23 CHAIRPERSON BROWN: You're saying owner/operator.
24 And the question Sheila is asking is if there is an owner
25 who leases it to somebody else to operate another

1 business --

2 CHIEF COUNSEL BLOCK: The new lessee would be
3 considered the operator by us. And the owner would still
4 be the owner, because they still --

5 CHAIRPERSON BROWN: We hold them both
6 accountable?

7 CHIEF COUNSEL BLOCK: Yes. But only the current
8 owners and operators. That's what Bill was responding to.
9 If there was an actual sale --

10 CHAIRPERSON BROWN: No. Bill said we hold one
11 entity responsible. And you're saying there are two
12 entities that could be held responsible.

13 BOARD MEMBER KUEHL: You said the statute says
14 owner or operator or owner and operator?

15 CHIEF COUNSEL BLOCK: We may be answering two
16 different questions.

17 BOARD MEMBER KUEHL: I'm interested as to whether
18 the owner of the landfill who is now responsible and has
19 deposited their whatever, made their financial assurances,
20 wishes to lease the land to someone to operate something,
21 but not a landfill. If we have current statutory
22 authority to continue, even if they tried to transfer the
23 responsibility for maintenance to the lessee, if we have
24 the ability to say we don't care what you did in your
25 contract, we're holding the original operator/owner and

1 continuing owner responsible.

2 DIVISION CHIEF ORR: Let me give you the
3 non-legal answer, more the programmatic answer.

4 The programmatic answer is we hold onto the
5 financial assurance mechanism until somebody else puts one
6 in place that meets the requirement. So whether you own
7 it, whether you lease it, we have basically the party
8 that's on the hook for that property until they
9 successfully put a new financial assurance mechanism in
10 place.

11 BOARD MEMBER KUEHL: I'm going to need to have
12 kind of an answer to the question, because if one of the
13 things we might choose to do is to have maintenance taken
14 care of outside of the financial assurances, so that -- or
15 so it always remains 30x or whatever, then the question
16 could arise if they tried to transfer the responsibility
17 for that maintenance in a lease.

18 I realize it's a little arcane as a question at
19 the moment. But, you know, since I worked on for
20 ten years the site of the only nuclear meltdown in
21 California and there is a lot of questions about who's
22 responsible, I'd just like to know.

23 CHIEF COUNSEL BLOCK: So let me apologize. I may
24 have been answering a different question than you were
25 asking, which may have been part of the confusion.

1 In the example you're giving, leasing the
2 property for some other purposes, in that example, we
3 would never -- as Bill mentioned, we would never release
4 the current land owner from the responsibility. If that
5 new business is not operating the landfill, they're just
6 using a piece of the property for something else, they
7 actually would be in the loop on this.

8 But so we would still be keeping them liable as
9 Bill said, unless somebody else stepped in and replaced
10 that. That would be really -- transfer of ownership is
11 really only where that occurs.

12 Does that clear that up? I apologize if I was
13 answering the wrong question there.

14 DIVISION CHIEF ORR: So unless there are any
15 other questions on the second question, we can move on to
16 the third one.

17 --o0o--

18 DIVISION CHIEF ORR: And that's whether and how
19 to address the remaining default exposure. And again
20 we'll look at the regulatory options. We'll look at the
21 combined default exposure as it relates to the remaining
22 defaults, go through the perspectives and a summary of the
23 comments received on the Phase 2 rules.

24 --o0o--

25 DIVISION CHIEF ORR: Now, in terms of how to

1 address the remaining exposure, some of the options -- we
2 start to narrow down the choices at this point. So one
3 option would be to add a 5x step up, which is sort of the
4 converse of the step down that I talked about earlier for
5 lack of continued performance or for lack of participation
6 in the enhanced monitoring program.

7 Let me briefly talk about what that means.

8 Currently, the proposed Phase 2 regulations say that if
9 you are doing a good job and not having any corrective
10 actions and you're participating in the proactive
11 monitoring program, then you can step down on five year
12 increments until you get to that five year multiplier.
13 But there's no converse.

14 So once you're down there, you're down there
15 throughout the remaining postclosure maintenance period,
16 which could be a disincentive for continued maintenance or
17 participation in the proactive monitoring program. If you
18 got down to five times the multiplier, you could simply
19 say you know that proactive monitoring thing, I don't want
20 to do that anymore. And under the current proposal, that
21 would have no consequence.

22 And the same thing is that you may say, hey, I'm
23 down to 5x. I'm not going to maintain the landfill with
24 the same rigor I was doing before I stepped down, and
25 there's really no consequence there as well. So this

1 would be a way to further minimize the exposure default.

2 Really, more as a deterrent to that lack of performance.

3 The Board could say we've done the best we can.

4 Some level of default is inevitable and find that it's an

5 acceptable risk to the State and no further action is

6 warranted.

7 And finally, you may say, well, you know, there's

8 still a little bit more. We really can't address it

9 through the regulations. So let's look and see what our

10 statutory options are. And those would be covered in

11 Agenda Item 4.

12 --o0o--

13 DIVISION CHIEF ORR: Again, this is the same

14 column. We're just looking at the pink level, which is

15 again depending on what option the Board may go for in

16 addressing the general level of postclosure maintenance

17 and the types of corrective action, it's a matter of

18 looking at what's left. And so that's really focusing on

19 that.

20 --o0o--

21 DIVISION CHIEF ORR: As far as the pros and cons,

22 as I indicated, pro for adding that provision in would be

23 as a deterrent to not stop performing and would also

24 reduce to some degree the remaining level of exposure to

25 the State.

1 On the con side, that step up provision is likely
2 to be fraught with costly litigation for limited
3 effectiveness and that recognition that some level of
4 default is inevitable. And there's only so much you can
5 do from a regulatory standpoint.

6 --o0o--

7 DIVISION CHIEF ORR: And in regard to the
8 comments that were received from stakeholders during the
9 Phase 2 public comment period and testimony, some
10 stakeholders did, in fact, recommend adding a step up
11 provision back in.

12 And others -- and we touched on this earlier --
13 suggested eliminating the step down and for that matter
14 the step up for the cash mechanisms that they recommended
15 should be drawn down or allowed to draw down to the five
16 times instead of the step down process.

17 --o0o--

18 DIVISION CHIEF ORR: So that brings us through
19 the policy level. We've gone through our three policy
20 questions. And if there are not any additional Board
21 member questions, we would propose to open it up for
22 public comment on the policy issues that we've just
23 addressed.

24 CHAIRPERSON BROWN: Okay. We do have questions.
25 So I'm going to start with Sheila.

1 BOARD MEMBER KUEHL: Just one on the last couple
2 slides where there was a pro -- do you know how to go
3 backwards?

4 --o0o--

5 BOARD MEMBER KUEHL: The question of the
6 remaining default exposure, you said the pros were it's a
7 deterrent to not stop performing.

8 DIVISION CHIEF ORR: Yeah. A great double
9 negative, isn't it?

10 BOARD MEMBER KUEHL: It's a triple negative.
11 What you've said is it's a deterrent to keep performing,
12 which is not a pro. You mean it's a deterrent to stop
13 performing, deterrent or an encouragement to keep
14 performing?

15 DIVISION CHIEF ORR: Yes.

16 BOARD MEMBER KUEHL: I'm sorry.

17 DIVISION CHIEF ORR: It's intended --

18 CHAIRPERSON BROWN: I think we were all stuck on
19 that. I didn't listen to the rest. So thank you for
20 pulling this slide back up. I was trying to understand
21 the first bullet.

22 DIVISION CHIEF ORR: I think it was late at night
23 when I did the slide.

24 BOARD MEMBER KUEHL: You've done a wonderful job.
25 I'm trying to understand the conclusion was it's more of

1 an encouragement to keep performing.

2 CHAIRPERSON BROWN: Thank you for asking.

3 Did we have any other questions? We do have a
4 robust audience participation list. So I'll start in on
5 them. Our first speaker is Glenn Acosta. Glen is going
6 to be followed by Scott Smithline.

7 MR. ACOSTA: Well, good morning, Madam Chair and
8 Board members.

9 You know, there's been a lot of discussion about
10 trying to reduce the financial risk or exposure to the
11 State. Yet, the one financial mechanism that provides the
12 State the most protection and least risk is the one most
13 impacted by the proposed regulations.

14 The Waste Board's own report calls cash
15 demonstrations like trust funds the gold standard. And
16 that's because the operator has set aside the money
17 necessary to perform the maintenance on the site. It's
18 ready to be used. There's no delay getting at it. The
19 Board staff controls disbursement of the money. And the
20 regulations as they are proposed would essentially
21 eliminate their use.

22 And let me explain that in simple terms. I think
23 the best analogy I can use is your 401(k). You're setting
24 aside money now for retirement. And when you retire, say
25 halfway through your retirement, you're told, hey, you can

1 no longer access your money. You can no longer have your
2 money. And you're saying, well, I retired a long time
3 ago. I don't have a job. I don't have the ability to
4 generate revenue. And I've been counting on that money to
5 live on.

6 This is a tremendous disincentive to put money
7 into a 401(k). If you're not going to have that money
8 later, why put it in now? This is exactly what the
9 regulations would do.

10 What's worse is if you were to adopt the regs as
11 is today, some operators that use cash demonstrations
12 would not have that money available tomorrow. If you were
13 closed before 1994, you are now at the 15-year mark, and
14 tomorrow you would not have that money that you counted
15 on.

16 Now, let's talk a little bit about the risk to
17 the State. Again, publicly owned landfills account for
18 three quarters of the landfills subject to financial
19 assurance. Local public agencies and counties, we're not
20 going anywhere. We're going to be around. So in order
21 for the State to really have exposure, that means that we
22 would have to go away.

23 So we're on the hook. We will take care of our
24 sites. So there's really much less exposure to the State.

25 A large public operator with multiple sources of

1 income or revenue like us that use trust funds is the
2 lowest risk you can possibly have. Ironically, the
3 proposed regulations impact us the most.

4 Lastly, you know, making sure that there's
5 adequate money available for postclosure care really
6 requires careful long-range financial planning. So our
7 proposal for cash demonstrations would not disrupt those
8 financial plans and would allow time for operators like us
9 to develop new assets that generate revenue in the future.

10 So we ask that you please consider our proposal
11 and look carefully at the concerns that we raised in our
12 comment letter, because they have real impacts today and
13 they will change the landscape of financial assurance for
14 you and for the State.

15 And, you know, if you look at all the financial
16 mechanisms as a financial portfolio of the State and you
17 go from the least risky to the most secure, if you
18 eliminate the most secure, you're now shifting everything
19 to more risky. So I ask you to really look at that and
20 when you deliberate on what the next steps are.

21 Thank you.

22 CHAIRPERSON BROWN: Thank you, Glenn.

23 Our next speaker is Scott Smithline, followed by
24 Bill Magavern.

25 MR. SMITHLINE: Good morning, Madam Chair and

1 Board members. My name is Scott Smithline with the
2 environmental group Californians Against Waste.

3 This is a daunting and complicated issue with
4 lots of moving parts, and I appreciate the fact that you
5 are taking additional testimony here and really trying to
6 come up with a program that will work for the State.

7 It's our opinion that we're not ready to move
8 forward with these regulations. At this time, we would
9 ask that you not move them forward, that you instead would
10 consider adopting a rolling 30-year requirement until
11 additional analyses can be done to really look into some
12 of the issues that we think have not been fully vetted
13 yet. I would like to take a minute to talk about what
14 some of those issues are.

15 There are really three parts to this as I see it.
16 There are the costs associated with postclosure
17 maintenance and eventual corrective actions. There is the
18 risk that those costs will have to be borne by the State.
19 And then there's a policy about how we should apportion
20 those risks.

21 On the first piece, we have repeatedly said and
22 we continue to feel that the cost estimations done by ICF
23 and essentially concluded by staff are not valid
24 ultimately, that looking backwards 15 years at what costs
25 have been is not a reasonable representation of what they

1 will likely be.

2 I'd like to come back to Board Member Kuehl's
3 statement about how long are we really talking about here.
4 We are talking about forever. The longer we do better
5 postclosure maintenance, the longer we push forever off
6 into the future. But we will never, assuming we continue
7 to operate these landfills as dry tomb landfills and not
8 as energy generators and try to increase biological
9 activity and hurry up the process, as long as we continue
10 to operate them as dormant cells, we will be putting into
11 perpetuity the requirement we maintain these things.

12 So another single point I'd like to make about
13 the cost estimates is that it is our understanding that AB
14 2296 actually requires you to implement a contingency on
15 postclosure maintenance. And that seems to have not been
16 done in this regulatory package.

17 The second piece surrounding costs is what
18 categories of cost are going to be concluded or addressed
19 by the regulations? We do not believe that an adequate
20 assessment has been made of what costs are likely going to
21 occur. The staff have made some adjustment with respect
22 to assuming there will be a cover replacement at some
23 point, I think every 200 years. I'm not sure that's the
24 right number. I'm glad it's on the table. I would like
25 to see a lot more analysis about that number, particularly

1 since it's my understanding most of the manufacturers
2 guarantee these things about for 20 years or something in
3 that neighborhood.

4 But I think there are a host of other costs that
5 we consider major maintenance that have now been moved
6 into a category called corrective action. And I think
7 that we're not comfortable with those costs being moved
8 into the category of corrective action. And we think
9 there are other costs in addition to cap replacement that
10 need to be looked at. Things like major repair or
11 replacement of gas collection system 75 years down the
12 road or something to that effect.

13 The next piece is the probability of default.
14 You know, we have reviewed ICF's report and their analysis
15 of default. We do not think it's adequate. Again, their
16 analysis on the private landfill is that on multiple
17 landfills in the State is that every year there is a .15
18 percent chance over the next 100 years a single payment
19 will be missed by these guys. We think that's exceedingly
20 low.

21 And then they estimate there is a one percent
22 chance of those .15 percent chance of a single default,
23 there will be a complete default by the operator. Again,
24 I think over the next 100 years, we'll be lucky if half
25 these guys are still around.

1 So I think that while it may have been a diligent
2 exercise in how they have done it, I'm not sure it passes
3 the straight face test from our perspective in this
4 particular industry. We have requested the staff look at
5 other industries and do a higher level analysis and look
6 at industries where in general there would be an
7 extractive period or revenue generation period followed by
8 a liability period, something like an abandoned mine
9 analysis. And we still encourage you to follow that path
10 and do additional analysis.

11 And then the third piece is the policy piece on
12 about how we will apportion these risks. The staff is
13 basically telling you there's no way around risk. If you
14 ask operators to put forth the amount of money that would
15 be required to cover all the costs associated with these
16 landfills in perpetuity, they're going to go out of
17 business. If you ask them to put forth less money, you
18 will get it, but it's not going to be enough to cover all
19 the costs. So either way, there's going to be risk to the
20 State. We're not in a place to ask landfill operators to
21 cover the true cost of landfilling in the State. So the
22 question is, what do we do? And how do we apportion that
23 risk?

24 We contend that the only viable policy option is
25 to absolutely minimize the cost to the State. Staff has

1 repeatedly said in testimony and in Board meetings that
2 they think the most protective action to take is a rolling
3 30. We have testimony the staff additional -- I won't
4 bother reading it into the record, because you have it in
5 your record. But ultimately, you know, they have
6 recommended not to drop below 15x without a pooled fund in
7 place. We do not have a pooled fund in place. 30x is the
8 most protective. I see no rational basis to move to a
9 five or 8x.

10 Essentially, what we'd be saying is the State is
11 wishing to take an additional liability more than is
12 absolutely necessary to essentially subsidize the cost of
13 landfilling. We're essentially saying we will take on
14 this additional risk. And in doing so, we are going to
15 reduce the up front cost of landfilling, which frankly
16 just makes landfilling more competitive with recycling.
17 We think it's a regressive policy.

18 I just close. Thank you for letting me have an
19 extended period of time. We ask you implement a rolling
20 30. We believe it's within your legislative authority to
21 do that at this time and continue down the path of doing
22 additional analysis on this.

23 Thank you

24 CHAIRPERSON BROWN: Thank you, Scott. Don't step
25 away. We have a question.

1 And I want to mention that, you know, we're going
2 to continue asking questions as issues come up and
3 opportunities.

4 So Sheila has a question, and then if anybody
5 wants to jump in, we're going to do it that way.

6 BOARD MEMBER KUEHL: Mr. Smithline, I wanted to
7 ask in light of what Mr. Acosta said about landfills that
8 have already closed and might be some years down the line,
9 has CAW thought about how to apply your desire that there
10 be a rolling 30 to landfills that are already closed and
11 engaged in drawing down from, you know, trust funds, et
12 cetera?

13 MR. SMITHLINE: Board Member Kuehl, we do not
14 have a reasonable response to that question. I wish I did
15 have an answer to that. It is a legitimate problem. We
16 do think that there are some legitimate distinctions
17 between public and private. So, frankly, I can talk five
18 minutes more about that. I don't have an idea of how we
19 can address that particular problem.

20 BOARD MEMBER KUEHL: It wasn't a got you kind of
21 question. As people come up and I know several people
22 here do think about this 24/7. So I'm just interested to
23 try to find practical ways to think about wanting to do
24 one thing or another and intended, because I don't think
25 there are any unintended consequences.

1 Thank you, Mr. Smith.

2 CHAIRPERSON BROWN: Thank you, Scott.

3 Bill Magavern followed by Mike Mohajer.

4 MR. MAGAVERN: Good afternoon, Board members.

5 I'm Bill Magavern with Sierra Club, California.

6 Remember, Enron at one point, they were known as
7 the smartest guys in the room. One of the rooms
8 unfortunately was the California Capitol.

9 Remember Lehman Brothers, which was considered
10 too big to fail recently about a year ago. And consider
11 the government bailout of AIG.

12 The fall of these giant corporations reminds us
13 that companies that seem to be rich and powerful one day
14 very soon in a remarkably short period of time can become
15 companies that need bailouts or are actually bankrupt now.

16 I'm sure we'll hear from the landfill operators,
17 well, that couldn't happen to us. Couldn't happen here in
18 California. And actually it has already happened in
19 California. The BKK landfill in West Covina defaulted.
20 That's already cost the State of California millions of
21 dollars in general fund money.

22 So because of that experience and the prospect of
23 having these big liabilities down the road and that our
24 environmental obligations might not be met, we
25 co-sponsored AB 2296 wanting to make sure that this Board,

1 which was already engaged in the process, had a real
2 mandate from the Legislature to make sure that the
3 environment and the taxpayers were protected.

4 I think we all love to find the win-win
5 solutions. Yesterday, it was great to see some landfill
6 representatives along with environmental groups, local
7 governments, and the Waste Board come together to support
8 a producer responsibility bill in Committee.

9 Now, there was plenty of opposition from the
10 producers. But in the waste world, there was a lot of
11 support, which was great to see. And I think we're all
12 really excited to work towards the zero waste future.

13 But in the mean time, we got this legacy of the
14 landfills. And it's a lot tougher to find the win-win
15 there, because really as Mr. Orr said, somebody is going
16 to pay. I think it's really important for this Board to
17 do everything possible to make sure it's not the taxpayers
18 of the state that get left holding the bag and it's not
19 the environment that suffers, because we didn't act enough
20 now to make sure that money was put aside up front.

21 It's also important that we acknowledge the true
22 costs of landfills, including costs way into the future
23 and the postclosure period. That's going to help us weigh
24 all the alternatives as we make future policy.

25 So I think you've already heard a number of the

1 ways in which we feel that the current proposal does not
2 address all of the costs that we will face in the future
3 from closed landfills.

4 And just to pick out one I think very major
5 example, it's really -- we don't think it's correct to act
6 as if all corrective action can now be paid for by the
7 account that's been put aside for water quality corrective
8 action. And I remind you that the compliance rate with
9 the Water Board corrective action is only 46 percent. And
10 that's been going up. But I don't think we should be very
11 happy with less than half compliance there. It doesn't
12 give us a lot of assurance going forward.

13 So within the boundaries of the staff analysis,
14 with which as you know we have many disagreements, it's
15 clear that even if we were to accept that, the least
16 unacceptable option would be the rolling 30-year period.

17 So we would urge you to do is to decide now that
18 you will require that rolling 30-year period so that money
19 can start being set aside for that before we get too much
20 further and that then you continue to look at all of these
21 broader costs that we think have not been completely
22 addressed.

23 We don't think it's appropriate to step down.
24 We're asking for a step up here to meet the obligations
25 under 2296 and the Board's authority. And although there

1 may well be some areas in which we could see some
2 statutory improvements, we urge you not to punt to the
3 Legislature, to adopt the most appropriate regulation
4 here, and then if necessary ask the Legislature to make
5 improvements on that.

6 I want to say that I really appreciate the
7 seriousness with which all of you are taking this issue as
8 reflected by the comments and questions today, because
9 this is one of the most important decisions that you'll
10 make as a Board.

11 Thank you.

12 BOARD MEMBER MIGDEN: Madam Chair, let me just
13 ask, you know, everyone has alluded to not a reflection of
14 real costs. Do we have some supplemental? And moreover,
15 it's always the case here that it's a good idea to keep
16 studying things and commission more reports, which I don't
17 know if we're in the financial capability or have the
18 wherewithal to do.

19 So what would help me is what goes into the
20 statements that both you and Scott made about -- how much
21 is it off the real cost? What are you saying? We are
22 short a third? Twenty percent? We're miscounting stuff?
23 Putting them in other categories? That's one.

24 And then secondly, the 30-year revolving, a lot
25 of -- I think what we're trying to do here is strain as to

1 develop, not to pass. We have an opportunity to improve I
2 feel our environmental policy. And it's important to take
3 that opportunity. And this is a year review. And that's
4 what this Board is deliberating upon. Yet, we are in the
5 worst meltdown in the history of the world. So we do want
6 to keep stable; right? We want to be mindful.

7 One thing is how much are we off?

8 And secondly is this: What you would have said
9 to us a year before the markets fell apart? And whether
10 we were right or not right about Lehman Brothers, Goldman
11 Sachs, others, we sort of don't want to exacerbate
12 collapses.

13 So firstly, how much are we off in our cost
14 estimates? And secondly, is there any mitigation of
15 approach based upon present day fiscal hardships from your
16 organization's respect?

17 MR. MAGAVERN: In regards to the first question,
18 we don't think the analysis has been done to determine how
19 much we're off on the cost. When the staff was doing
20 modeling, we actually gave them scenarios, asked them to
21 run. And the scenarios we gave them evidently couldn't be
22 run through the model they were using. So they tried, but
23 it actually would not spit out the figures. And they can
24 maybe illuminate us more on that.

25 We have suggested that one way to address this

1 would be to instead of or in addition to relying on
2 modeling, to actually take two or three of the big
3 landfills in California and do probabilistic risk
4 assessments at those sites. Look at these particular
5 sites and what are we likely to see in the future. We
6 think it would be very helpful to have that data.

7 And certainly to your second point, no question,
8 the economy is in really bad shape. We're looking at
9 decisions that will have effect for 20, 30, 50, 100 years.
10 So of course we need to take into account economic
11 circumstances. But we also need to understand that this
12 will be something that's set up for over a very long
13 period of time. And what will be effecting particular
14 companies in the next half year to a year or so shouldn't
15 really determine our long-term prospects.

16 BOARD MEMBER MIGDEN: No. But I guess I would
17 add only if we have some kind of triggers. In other
18 words, no one is meaning to suggest that we sort of pass
19 the buck here and miss an opportunity. But we also have
20 to triturate and balance the financial capability in these
21 times and solvency issues versus what would trigger
22 additional bond assurances.

23 And I'm interested that we don't miscount and
24 misstatements made about whether something is part of a
25 bond and upkeep or whether money is switching columns, I

1 think it's important to pay attention to.

2 Thank you, Madam Chair.

3 CHAIRPERSON BROWN: Thank you, Carole. I think
4 Carol's question was excellent. I'm not sure I understood
5 exactly your answer.

6 What I got from her question is she asked if you
7 have done calculations on how much our staff is off? And
8 you indicated you gave them numbers to run numbers for
9 you. Have you done an independent analysis on what you
10 think the appropriate cost should be?

11 MR. MAGAVERN: No. We were participating in the
12 process trying to feed in --

13 CHAIRPERSON BROWN: To the model?

14 MR. MAGAVERN: We don't have the capability to do
15 our own analyses of all these costs. That's why we've
16 given suggestions how that can be done.

17 CHAIRPERSON BROWN: So you're just basing the
18 fact that the cost analysis is off, because they couldn't
19 run it with your numbers?

20 MR. MAGAVERN: Well, we've also named a number of
21 particular ways in which costs are being understated.

22 CHAIRPERSON BROWN: So like in the major cost,
23 major maintenance issues, corrective action, so is your
24 question, Bill, then, that we maybe look at what's
25 considered maintenance, major maintenance, what should be

1 considered in corrective action versus regular postclosure
2 maintenance?

3 MR. MAGAVERN: Right. We've raised these
4 concerns throughout the process and in our response to the
5 ICF report and a number of suggestions we've made during
6 the years this has been going on.

7 CHAIRPERSON BROWN: Thank you for the
8 clarification.

9 MR. MAGAVERN: Thanks. If I can add one other
10 point in terms of the risk of default. I want to add that
11 is in many ways accounted for in the analysis that shows
12 the least risk at 30x, because perpetual care is 49x,
13 which is something we might want to shoot for. But then
14 with the concern that there might be too much of a burden
15 and that might actually cause more defaults, that's, as I
16 understand it, how you come up with the overall least risk
17 being at 30x.

18 So I think there is some accounting here for what
19 could happen if as Board Member Migden says you put too
20 much of a burden on the operators.

21 CHAIRPERSON BROWN: Thank you, Bill.

22 Mike Mohajer. And up after Mike is going to be
23 Chuck Helget.

24 MR. MOHAJER: Good afternoon, Madam Chair, and
25 Board members. My name is Mike. And today I'm before you

1 on this item on behalf of the Los Angeles County Solid
2 Waste Management Committee.

3 But at times, because of what I have done in the
4 past, I may get confused. So because I used to run the
5 L.A. County program since 1972 when I got involved with
6 all the environmental issue, including the running the
7 landfills and our requirements. So if I get sort of mixed
8 up from here to there, the things that are important is
9 what I'm before you from the task force and not
10 individually running some other program.

11 But before I get to the task force issue, a
12 couple of questions that were raised. At least when I was
13 working before my retirement back in 2003, for the
14 landfills that are in the unincorporated areas for Los
15 Angeles County, we put down maintenance in perpetuity. We
16 didn't specify any numbers, but it was a maintenance in
17 perpetuity. And all the landfills that are under our
18 jurisdictions that they have in use, they do have that
19 requirement.

20 As far as the question was raised about the
21 closed landfill, and what is going to happen with those, I
22 personally wrote the building code back in 1975 that we
23 established a thousand foot radius for construction on or
24 adjacent to a landfill.

25 And the issue at that time over all these years

1 has been what is going to happen to the lands that are
2 adjacent to the closed landfills that they want to
3 develop, and the owner has switched hands, and they get
4 stuck with putting up the bill for protecting their
5 building. And our position so far has been we make
6 whoever wants to develop to pay the cost, which may not be
7 the right way to do it, but that's the only source that we
8 have for the closed landfills.

9 Now, with that said, I also wanted to thank you
10 for the EPR, your support yesterday. And unfortunately I
11 had to leave because of my airline.

12 But anyhow, going back to this issue. Number
13 one, the County Task Force is in full support of what Mr.
14 Acosta said talking about the cash investment. And in
15 essence, it just makes it impossible for them to operate.
16 And you're not talking about a 10 million or 20 million or
17 \$50 million. It's a substantial amount of dollars that
18 gets involved. So rather than going through and to repeat
19 what Glenn mentioned, the task force voted also in support
20 of that position.

21 There are a number of steps task force has
22 recommended, and I don't know whether staff has answered
23 it or not, because of response of comments I didn't get a
24 chance to read it.

25 The first one was really we want to address that

1 any time there is a transfer between the title from one
2 previous owner to new one, you've got to have a covenant
3 and agreement that the property owner both sign that would
4 take over the responsibility. And part of that
5 responsibility is going to be that the new owner of the
6 property must comply with the financial requirement of the
7 Waste Board and the enforcement agency.

8 And this is what, for example, we have put it
9 down again. Goes back to 1975. This is where I flip-flop
10 between the county and task force that all the property
11 owners, they signed the covenant and agreement and they
12 agreed for themselves and their heirs in perpetuity that
13 they're responsible to maintain the gas control system and
14 so on and so on, even though the structure is not on a
15 landfill. But the same thing could be required through
16 the regulations that going through with the covenant and
17 agreement for the property owner -- new property owners.

18 The second issue was that we were somewhat
19 confused as to whether the proposal is going to be
20 applicable to all the landfills that they were operating
21 starting in January of 1988 or July 1st of 1991. And
22 there was some at least confusion on our part, because of
23 the way the regulation was addressing it.

24 And the next item also is in reference that when
25 you use an existing fund for corrective action work, as

1 Bill mentioned, that you have the option of putting the
2 money back in there at five years and possibly longer than
3 five years. And our task force was very strongly opposed
4 extending it beyond the five years. However, we suggest
5 that you could ask to reduce the five years between the
6 Waste Board and the Water Board, but not to extend it
7 beyond the five years.

8 But there are other issue that I will be
9 discussing and I come forward. And one thing that Bill
10 and I we have always sort of argued was the issue of
11 really is the liability. Is it the liability of the
12 State, or is it the liability of the local government?

13 And really, the first line of defense is the
14 local government. And I know that, because I had to pay
15 for four landfills as a part of operation I have for
16 collecting garbage as a garbage disposal district that we
17 ultimately got sued and had to pay for it by the State of
18 California.

19 So I told Bill that from my standpoint I don't
20 look at the Waste Board and the Water Board and the DTSC
21 and so on and so on. I look at the State. At the local
22 government does have the mechanism to pay, and that will
23 be either through selling the bond or going through the
24 Prop 218. It's not Prop. We can't go a direct assessment
25 of property tax bill, that's how I came up with the money.

1 It's not subject to Prop 13. It's subject to Prop 218,
2 which all you need if you don't get a written majority
3 opposition, then you can impose that assessment fee.

4 So that financial assurance that the State is
5 looking from the public agencies that own and operate the
6 landfills, it is in there.

7 And finally, I had a question in reference to Mr.
8 Block. I got somewhat confused between the operator
9 liability and the property owner. And my understanding
10 was that the operator is also responsible for the
11 postclosure after the landfill closes, regardless of
12 whether the property switch hands or not.

13 But am I correct that your statement was that if
14 the property switched hands, the operator has no
15 responsibility at all? Or did I misunderstand?

16 I know that Senator Kuehl asked for some written
17 response later on. Maybe you can include me with that
18 also.

19 Thank you.

20 CHAIRPERSON BROWN: Don't go anywhere.

21 Mike, I have a question for you after you give
22 Elliot a chance to answer.

23 He was asking for the clarification the owner of
24 the property is responsible until -- and Bill clarified --
25 there is a new financial assurance mechanism at the

1 transfer of ownership.

2 MR. MOHAJER: This makes significant difference
3 as far as a lot of the stuff that we were going by that
4 the operator is also responsible. But the minute the
5 property switches hand, the operator no longer has any
6 responsibility. For example, if the landfill closes one
7 year after the closure, the operator is going to walk
8 away?

9 CHIEF COUNSEL BLOCK: A couple of things.

10 Number one is as I think became clear in the
11 conversation that Member Kuehl was asking a different
12 question than you've raised.

13 All I was doing initially -- and there's nothing
14 I suggested that was different from the answer that Bill
15 gave. All I was suggesting was that if you look at the
16 statute, the statute references owner and operator, and
17 it's current operator as opposed to once somebody has
18 nothing to do with the property and they've been released
19 through the requirements and the like that we don't have
20 the ability to still keep them under the statute. That
21 was all I was responding to. Nothing along the lines of
22 what you just suggested I said.

23 MR. MOHAJER: Let me ask it this way. Being a
24 simple engineer as I always say, the answer you said -- my
25 question really is, if the landfill closes, after one

1 year, there is a transfer in the title. Does the operator
2 have any responsibility at that time? Yes or no?

3 CHIEF COUNSEL BLOCK: I guess the reason I'm
4 having difficulty answering the question is it doesn't
5 make sense in the context of our statutes and regulations.

6 As Bill had indicated, nobody is released from
7 liability until such time as they meet the requirements
8 and somebody else takes responsibility for that. So there
9 is no automatic release from liability.

10 MR. MOHAJER: I still want an answer yes or no.
11 It becomes millions and millions and millions of dollars.
12 So is it yes or no? If there is nothing in the statute
13 that makes it operator liable --

14 CHIEF COUNSEL BLOCK: If you let me finish
15 answering, I would say no one is released from
16 responsibility until such time as the Board through the
17 statutes and the regulations through the procedures that
18 are adopted releases them. There is no automatic release
19 of liability.

20 CHAIRPERSON BROWN: Bill, at the time of closure,
21 the entire amount is held by the Waste Board. And none of
22 that is released with the transfer of ownership one year
23 after.

24 You're asking a question that doesn't really
25 relate, because there is no transfer of financial

1 assurance one year after. There is maintenance costs
2 that's just begun. So the operator or whoever is
3 responsible that put up the financial assurance is still
4 responsible.

5 MR. MOHAJER: My question was, Madam Chair, in
6 reference to the change in the ownership and what impact
7 it's going to have. But I guess I just let it go with
8 that.

9 CHAIRPERSON BROWN: The change of ownership does
10 not occur until there is a new adequate agreed-upon
11 financial assurance mechanism put into place. So the
12 original one is not released until a new one that is
13 agreed upon is put in its place. So you can't take away
14 this one until a new one supplants it. There is no
15 transfer or release of funds.

16 MR. MOHAJER: Madam Chair, I do not want to
17 argue, but that's how the question of divestiture we are
18 talking about right now.

19 CHAIRPERSON BROWN: We have taken the issue of
20 divestiture off the table today. We're not talking about
21 divestiture.

22 MR. MOHAJER: That's why the issue is on the
23 table.

24 BOARD MEMBER KUEHL: I have a question. Could I
25 ask you a question? Sorry. I had a question as well.

1 What is the assurance mechanism that L.A. County
2 uses for perpetuity?

3 MR. MOHAJER: We require to provide insurance.
4 We do not require cash.

5 BOARD MEMBER MIGDEN: What level?

6 CHAIRPERSON BROWN: Pledge of revenue?

7 MR. MOHAJER: Basically, it's going to be pledge
8 they're going to be responsible for maintaining the
9 property in perpetuity. And they own the landfill.

10 BOARD MEMBER KUEHL: So someone makes a guess as
11 to what the annual maintenance costs of a particular
12 closed landfill is going to be, and the county purchases
13 insurance to cover that a year at a time?

14 MR. MOHAJER: No. Let's use the example Puente
15 Hills Landfill, for example. Puente Hills Landfill is
16 owned by the County Sanitation District, which is not part
17 of the county government. As a part of issuing the CUP to
18 Puente Hills Landfill, we require that the Sanitation
19 District remain responsible for maintenance of the
20 landfill in perpetuity. And that's all we ask from them.
21 We do not dollar for dollar amount or anything like that.
22 We use the mechanism which is financial assurance in place
23 over here, but we will continue it in perpetuity whatever
24 happens. Whether or not they have money or not, we still
25 hold the property owner responsible in perpetuity.

1 BOARD MEMBER KUEHL: So the financial assurance
2 mechanism is our financial assurance mechanism? You were
3 saying to them beyond that time, if necessary, as far as
4 we're concerned, you're still liable?

5 MR. MOHAJER: It will remain with the title of
6 the property. They are going to be responsible for any
7 environmental contamination and solution to those.

8 BOARD MEMBER KUEHL: Thank you.

9 CHAIRPERSON BROWN: Well, Mike, I had a question,
10 too.

11 Because Larry actually brought this up in
12 Committee, the perpetuity. And most counties with their
13 pledge of revenue provide for cost assurance and
14 maintenance into perpetuity.

15 But what if a county can't do the maintenance and
16 they're under an enforcement order to do the maintenance,
17 because the county doesn't have the money? We had a
18 Cleanup Act I believe in Southern California. I don't
19 know the exact county off the top of my head. They
20 purchased or were given a landfill from a private
21 operator. They took the landfill. They owned the
22 landfill. They developed around it. There was a gas leak
23 into the development around it, and the city could not do
24 the maintenance.

25 MR. MOHAJER: Well, I know exactly the landfill

1 you're talking about. And that was part of the
2 redevelopment agency that got involved with that, because
3 I'm involved with that as a different hat.

4 CHAIRPERSON BROWN: Where's perpetuity?

5 MR. MOHAJER: But that is -- Madam Chair, that is
6 a landfill that was closed back in early to mid 1960s.

7 CHAIRPERSON BROWN: We're still in perpetuity.

8 MR. MOHAJER: You're talking about the landfills
9 that are in 1988 or 1991 that you're talking about.

10 Now as far as if that particular city has the
11 political will to do it and the enforcement is issued to
12 the city, the city will do it.

13 So my question comes over here to the Waste
14 Board, did they issue the enforcement? Has the
15 enforcement been issued on that?

16 CHAIRPERSON BROWN: You know --

17 MR. MOHAJER: I'm not trying --

18 CHAIRPERSON BROWN: We're not going to get into
19 the enforcement.

20 My question was simply should have been stated as
21 a statement. Perpetuity sometimes -- I mean, I understand
22 perpetuity. But I think there needs to be some balance
23 and some assurances. And, you know, we're talking about
24 perpetuity, and yet there are situations where the State
25 or somebody else has to pay.

1 MR. MOHAJER: As I said, Madam Chair, the cities
2 and counties, they have the mechanism to provide the
3 funding by selling bonds or imposing direct assessment of
4 property tax. The mechanism is there. Whether the
5 political will is there or not, that's a different story?

6 CHAIRPERSON BROWN: Thank you. I appreciate it.
7 Okay. Chuck, you're next, followed by Chuck
8 White.

9 MR. HELGET: Madam Chair, members of the
10 Committee, Chuck Helget representing Republic Services.

11 My first comment really is unrelated completely
12 to this topic. But I was just struck as I was sitting
13 here. I want to compliment staff on the quality of the
14 presentation. I want to compliment the Board on the
15 quality of the dialogue from the dias. And, in fact, the
16 public testimony as well. Anyone who believes the
17 Integrated Waste Management Board isn't doing their job
18 should listen and look at the video of this hearing. This
19 is truly what a transparent public dialogue should be all
20 about. So my compliments.

21 Since the passage of AB 2296, Republic Services
22 and Allied Waste, proceeding company BFI before that, have
23 been supportive of this, of improving the postclosure
24 maintenance cost, financial assurance estimating process.

25 We've sat through hours of workshops over the

1 past year. And, again, the dialogue in those workshops
2 have been intense at times and very thorough. It's been a
3 very, very thorough process. And the results of that
4 dialogue are here before you today.

5 But before moving forward, I think that the Board
6 should again consider the framework behind these
7 regulations. And first of all, Republic, we believe that
8 the existing framework is strong and has been made even
9 stronger with the passage of the Phase I regulations last
10 year and by increased enforcement by the Integrated Waste
11 Management Board staff and by the regional boards. So I
12 think that's important to continue to keep in mind that
13 our existing framework is not busted. It's not a crisis
14 stage. It is, in fact, has worked and is continued to be
15 working.

16 It should also be noted that modern landfills,
17 particularly in California, are designed to be protective
18 of the public health, safety, and the require regulators'
19 approval on virtually all aspects of our construction, our
20 design, our operation, our postclosure, and closure
21 activities. So consequently, modern California landfills
22 are designed not to fail, and they do not pose a crisis
23 level of risk that are sometimes portrayed in testimony.

24 It's also important to note, and I would also add
25 that to some degree this regulatory package that you're

1 considering today is sort of occurring during the game. I
2 think it's been alluded to by several questions that were
3 asked. And it is certainly within your purview to do so.
4 I'm not contesting that at all. I'm asking that you
5 consider the fact that we have ongoing financial
6 assurances. We have landfills in the state that are in
7 varying levels of operation and closure. And when you
8 change these regulations, you are going to impact
9 landfills differently.

10 Republic Services is a large company. We pay for
11 our corrective actions as they occur right now. We'll
12 continue to pay for those long into the future.

13 But there are other landfills out there that will
14 be impacted by these regulations and in fact could be
15 forced into default.

16 So, again, that I think is something that people
17 have to remember, the Board has to remember, and the
18 stakeholders have to remember.

19 So we believe that these proposed regulations
20 before you today offer a balance and are very close to
21 striking an appropriate balance between protecting the
22 State from the financial exposures caused by landfill
23 defaults and ensuring that facility owners and operators
24 have the assets available to properly maintain closed
25 landfills and return them to subsequent productive use.

1 Finally, the Board has received letters from
2 Assembly Member Skinner from Senator Simitian requesting a
3 delay in moving these regulations forward.

4 While we would prefer to see this regulatory
5 package move forward into a subsequent open comment
6 period, we would not oppose a delay in these regulations,
7 particularly from our perspective to give us an
8 opportunity to move forward with pooled fund legislation.

9 Responding quickly to some of the public
10 testimony. We would oppose a 30-year rolling that has
11 been proposed. And would oppose an additional contingency
12 fee primarily because of the impact the changes would have
13 on increasing defaults.

14 Again, Republic Services has submitted detailed
15 written comment on these regulations. I'm not going to
16 repeat our comments, but I would offer those for you for
17 continued deliberation.

18 Offer to answer any questions.

19 CHAIRPERSON BROWN: Thank you, Chuck.

20 Chuck White followed by Herman Robbies from Kern
21 County.

22 We are going to complete our public testimony and
23 then take a brief break for lunch, very brief, and come
24 back for continued discussion and hopefully take up Item 4
25 after that. So Chuck.

1 MR. WHITE: Thank you, Madam Chair, members of
2 the Board. Chuck White with Waste Management.

3 Like my colleague, the other Chuck, I was kind of
4 hoping the cameras would still be here so my first
5 comments can say how much we appreciate the public process
6 that this Board embodies and how it should be a model for
7 all State government.

8 With respect to the work the staff has done so
9 far, we are appreciative. I think Bill Orr is to be
10 complimented, along with his staff. They've done a great
11 job, very professional and very objective to bringing us
12 to this point. We're hopeful that we are nearing the time
13 where we can see a light at the end of the tunnel.

14 Waste Management is generally supportive of these
15 Phase 2 regulations. We have submitted comments, but
16 they're more really down in the weeds more than I want to
17 talk about today. They're really clarification of some
18 specific language on a sentence by sentence basis. We
19 look forward to continue working with staff, as Bill has
20 indicated, to make sure these issues are fully understood
21 about what the meaning is of these regulations you're
22 proposing.

23 CHAIRPERSON BROWN: Chuck, I apologize for
24 interrupting you. You've submitted a letter that Bill
25 has. Can we get copies of that? I don't know if the

1 Board members received copies. Just later. Not now. But
2 you don't have to go through all of it. We'll just --

3 MR. WHITE: Exactly.

4 There's two issues related to this whole
5 discussion. One is the postclosure maintenance period and
6 what is appropriate. And then the eventual assurance
7 mechanism that is used to back up those costs that are
8 estimated for that postclosure care period.

9 I always try to go back to the basic federal
10 regulations that are imposed by the U.S. EPA back in 1991
11 that addressed both these issues.

12 With respect to the postclosure maintenance, EPA
13 looked around for all available information, and they
14 thought the 30-year postclosure care period was the
15 appropriate place to start. Because after 30 years,
16 most -- not all, most landfills will stabilize. The gas
17 generating potential will decline, and they pose a
18 substantially reduced risk to human health and the
19 environment.

20 In its wisdom, U.S. EPA said we will give the
21 directors of approved States the ability to lengthen or
22 shorten that postclosure care period at any time as
23 necessary to protect human health and the environment.

24 So the basic federal rule for which California is
25 required to be in compliance is initial 30-year period

1 that can be lengthened or shortened as necessary to
2 protect human health and the environment.

3 The second part is the financial assurance
4 mechanism. U.S. EPA laid out a broad range of financial
5 assurance mechanisms, trust funds, corporate guarantees,
6 insurance, letters of credit and the like. We really
7 support the ability of use all of these financial
8 assurance mechanisms and urge the Board not to further
9 restrict access to any one of them that can be used either
10 individually or in concert with each other to meet the
11 overall financial assurance regs.

12 Waste Management nationwide uses all of these
13 financial assurance mechanisms.

14 U.S. EPA has reviewed the financial assurance
15 mechanisms under their Environmental Financial Advisory
16 Board and has basically found no reason to modify this
17 basic structure, the 30-year postclosure care that could
18 be lengthened or shortened in a broad away of financial
19 assurance mechanisms.

20 Not to say California can't do its own, but you
21 need to be consistent with at least what the federal
22 regulations are.

23 We've had this three-year process now that brings
24 us to this hearing today. AB 2296 was adopted. It
25 required you to adopt Phase 1 regulations, develop a

1 consultant report, the ICP Engineer's report that has been
2 referred to today, and adopt Phase 2 regulations by July
3 1st of this year, and prepare a report to the Legislature
4 on any additional legislative authority that is necessary
5 to fill any gaps.

6 This is the structure we've been working on.
7 This is what has brought us today these Phase 2
8 regulations and we hope the development of a pooled fund,
9 which we think need to go hand in hand.

10 I guess it is probably a little bit like a
11 chicken and egg situation, but we think they should both
12 proceed together. You've got the authority to adopt these
13 Phase 2 regulations, and now you're going to prepare a
14 report to the Legislature that we hope will suggest that a
15 pooled fund needs to go hand in hand with these Phase 2
16 regulations.

17 We think that a pooled fund is the most efficient
18 way to cover these additional risk amounts that are not
19 covered under the basic system rather than apply a
20 worst-case situation to every single one of the
21 200-some-odd landfills. Go with a reasonable approach
22 like you're doing in the Phase 2, and then back it up with
23 a pooled fund as is being suggested.

24 We think there's a good chance of going forward
25 in a pooled fund. There's all kind of different

1 configurations. We missed the Waste Board last year as
2 being part of that vibrant debate. We encourage the Board
3 to be an active participant as that pooled fund concept
4 goes forward.

5 The Phase 2 regulations start at the 30-year
6 process allow a decrease from years one to 15 as this draw
7 down period. After year 15, the possibility for
8 additional five-year step downs further.

9 This is really protective. It's essentially
10 equivalent to the federal regulations. The current
11 regulations don't provide for a step up. Waste Management
12 would not object to a provision added to the regulations
13 that would allow a step up, if necessary, if for some
14 reason you felt there was a problem that had been drawn
15 down or stepped down too far. And through the
16 non-performance of the owner/operator, we would be
17 certainly willing to support that, as long as there is a
18 clear and reasonable process -- due process to arrive at
19 this step up process as necessary based upon the
20 operator's performance. And that needs to be discussed
21 further in more length.

22 With respect to corrective action, we support the
23 process that's been laid out in the Phase 2 regulation.
24 The current structure under federal law is once you have a
25 known release you need to respond to, you have to provide

1 financial assurances for responding to that known release.

2 Since the mid 80s, California has gone that one
3 step further and required reasonably foreseeable releases
4 for water quality to be also backed up by additional
5 financial assurance. And there was a basis for that,
6 because the Water Board felt in its wisdom that if you had
7 a series of monitoring wells, what would be the largest
8 release that could occur before those monitoring wells
9 would detect that? And you have to provide financial
10 assurance to respond to that release.

11 There is no assurance that release would ever
12 occur, but if it does, there is sufficient revenue to be
13 able to respond to that. That's a reasonable foundation
14 for establishing a cost estimate for which waste
15 management is compliance, although we're concerned only
16 less than half the other landfills in the state are in
17 compliance even with the existing rules.

18 That provides a good basis for a cost estimate,
19 and we support the idea that this corrective action fund
20 once established based upon water quality could be used
21 for other needs as necessary to respond to corrective
22 actions that are non-water quality in nature.

23 One of the issues that's been talked about is the
24 use of the financial assurance mechanism. Waste
25 Management uses the broad variety of financial assurance

1 mechanisms, all of them that are available under federal
2 and State law. We don't use those financial assurance
3 mechanisms to pay for postclosure or closure or corrective
4 action.

5 We use the ongoing assets of the corporation. As
6 a publicly traded corporation, we're required to accrue
7 for all known liabilities and report those to the SEC.
8 And we do that on an ongoing every year. We budget every
9 year for the amount of money we need for postclosure care
10 and corrective action and are required to project all
11 known liabilities going forward, and we do this. And we
12 have no intention of using any of these financial
13 assurance mechanisms to cover these postclosure care,
14 closure care, or corrective action costs. They're there
15 to provide assurance of the economic health of the
16 corporation that provides you assurance that there is
17 these funds available and will continue to be available as
18 long as we are in compliance with these financial
19 assurance regulations.

20 So on a go-forward basis -- one more point on the
21 issue of divestiture, which I recognize is not something
22 for discussion. That's a huge chunk of money that the
23 staff has estimated. But that is based on the premise
24 that when someone divests a landfill to a new owner, that
25 new owner is less capable of performing corrective action

1 financial assurance postclosure care than the person that
2 was divesting the landfill.

3 We are fully supportive of providing whatever
4 additional regulations or statutory authority to ensure
5 that a divestiture occurs only to somebody that is fully
6 capable of complying with postclosure care, corrective
7 action, closure, whatever is required. And you would be
8 prohibited from transferring that landfill property to
9 anybody that is not equivalent to the basic requirement of
10 the regulations.

11 CHAIRPERSON BROWN: Actually, divestiture is part
12 of Item 4. I misspoke earlier.

13 I do have a question that Sheila would like to
14 ask.

15 And then not you, Chuck, but everybody, we're
16 going to ask you guys to wrap it up, because we're taking
17 a lunch break at 1:00 whether you have or haven't spoken.
18 I'm not as good as Senator Simitian at running a meeting.

19 Sheila.

20 BOARD MEMBER KUEHL: But I am.

21 Mr. White, it seems to me what you said about the
22 corporation being required to carry this as an ongoing
23 liability on its books is a way of saying indirectly so I
24 shouldn't have to have as much money in the financial
25 assurances pot as you guys want. Yes or no?

1 MR. WHITE: No, I'm not saying that. I'm saying
2 we support the basic requirement for a financial assurance
3 to cover it. We think the basic federal system that
4 established initial 30 years that can be lengthened or
5 shortened is necessary to protect human health is totally
6 appropriate.

7 We support the idea of a 15-year draw down,
8 additional 15-year step down, and an added provision to
9 step up if an operator is not performing during the
10 postclosure care period. We think this is totally
11 reasonable and totally consistent with federal
12 regulations. We don't know exactly --

13 BOARD MEMBER KUEHL: But is that a separate issue
14 so if we don't have a draw down, you're saying that the
15 corporation is still capable of doing the maintenance
16 without doing a draw down?

17 MR. WHITE: We are required to report every year
18 our financial health and our capability of responding to
19 liabilities.

20 BOARD MEMBER KUEHL: That's on paper. That
21 doesn't mean there's actual money available to do this.

22 MR. WHITE: It sure does. That means we can't
23 operate this corporation unless they provide adequate
24 accruals to cover all of our liabilities.

25 BOARD MEMBER KUEHL: Okay. Wanted to clarify

1 that. Thank you.

2 CHAIRPERSON BROWN: Thank you, Chuck.

3 MR. WHITE: Thank you.

4 CHAIRPERSON BROWN: Herman Robbins. I apologize.

5 I didn't have my glasses. And you're going to be followed

6 by Arthur Boon, and then have Evan Edgar is going to wrap

7 us up. So I'm going to give you about four minutes.

8 Sorry

9 MR. ROBBINS: Okay. Well, thank you for the
10 opportunity to speak before the Board.

11 My name is Herman Robbins. I'm with Kern County
12 Waste Management Department. And I just want to take a
13 few minutes of your time to just tell you that we think
14 Bill Orr and his group have done a fabulous job. I've
15 enjoyed working in his workshops, participating, just
16 working on his exercises and stuff that we've done. And
17 it's been certainly a pleasure to work with him on this
18 process. Thank you, Bill. Thank you very much.

19 One of the things that I do have to say that in
20 participating in these exercises, it has increased Kern
21 County's resolve that these current regulations are
22 strong. They're well structured. And I think before we
23 consider tampering with them, I don't think that the Board
24 has gathered enough information to move forward with
25 drafting these regulations at this time.

1 I think more evaluations need to be made. I
2 don't think there's enough information on sites that are
3 in the postclosure maintenance. I just don't think
4 there's enough data there to draw the conclusions we are
5 doing today.

6 I operate -- I've got eight landfills that are in
7 closure, several in postclosure maintenance. And I just
8 don't see the things that that the Board has concluded
9 with.

10 Another issue I kind of want to build up is that
11 Bill in one of our exercises, we were looking at landfills
12 in cities, municipalities that may have gone into default.
13 And we had identified Delano as one of the municipalities
14 that had gone into default.

15 And I was real interested in that, because I have
16 a landfill in McFarland, Delano. And even though the city
17 has gone into default, it's actually the county that
18 operates the landfills. So it really has had no impact on
19 our operations there.

20 And so just because a facility or a municipality
21 goes into default, there are other circumstances that are
22 out there that may effect what's going on. And I think
23 there's just not enough evaluation that has been done.

24 I personally don't think that we've really got
25 the definition of corrective action nailed down. And I'd

1 like to see some more work done on that.

2 But for Kern County, the deal on postclosure
3 maintenance to us would be a very simple deal. We have a
4 pledge of revenue. It would be very simple for us to
5 extend that beyond 30 years, and we can do that with just
6 a resolution. And I think most of the landfill owners
7 that operate up on the pledge of revenue, I think it would
8 be as simple to just extend the time frame.

9 For sites that are on the trust fund, it's a
10 little different. The federal government, State have
11 promised them 30 years. That's the time that you need to
12 put the money aside for. So it's a little different for
13 sites that are operating on the pledge of revenue -- sorry
14 -- under a trust fund.

15 CHAIRPERSON BROWN: I'm going to ask you to wrap
16 up, Mr. Robbins.

17 MR. ROBBINS: Well, I just want to take the time
18 and let you know that, you know, Kern County has sent in
19 two letters before. I'm sure you've seen them. And just
20 want to let you know we really appreciate our ability to
21 participate in this process.

22 CHAIRPERSON BROWN: Thank you. And I appreciate
23 your sending in the comments. We do get them. The Board
24 members do get copies of them. So very much appreciate
25 that.

1 Our next speaker is Arthur Boon followed by Evan
2 Edgar.

3 And Mr. Boone, I'm going to give you four minutes
4 as well.

5 MR. BOONE: Arthur Boone from Berkeley. I do not
6 represent the Northern California Recycling Association.
7 We have not discussed this. But there were some things
8 that came up that I thought I want to share with you.

9 I think of landfills as cemeteries for our stuff.
10 And so if there is any beneficial use that can be made of
11 that land after we're finished burying stuff with them, I
12 think that should be looked at somewhat separately.

13 I think we ought to look at the Cemetery Board.
14 There is a Cemetery Board that basically makes sure that
15 cemeteries don't go broke. When they get filled, they
16 have no more revenue. Same like landfills.

17 And I would very much like to see how the
18 Cemetery Boards manage all this in a way that it's a very
19 large private sector activity, and yet you don't read
20 about, hear about cemeteries going broke. Maybe that's a
21 model to look at.

22 Second question is why are there so many private
23 landfills? To me, landfills should be owned publicly. I
24 have never have really understood why there are so many
25 private landfills.

1 CHAIRPERSON BROWN: Actually, a majority of the
2 landfills in the state of California are public.

3 MR. BOONE: That's good.

4 I'm think the problem really comes up from the
5 privately held landfills.

6 About ten years ago, I was at a meeting. And a
7 man who was one time the president of the NSWA, I asked
8 him why do we hear nothing about public landfills growing
9 in California? And what he said was it takes ten years to
10 put a landfill together as a business venture. And we
11 can't get that kind of sustained attention in the public
12 sector. People turn over in elected office, the
13 politicians change their opinions and views.

14 And what you end up with is something like what
15 L.A. San has done in Southern California where essentially
16 a private company developed a landfill out in the desert,
17 and it was all done and wrapped, then they bought it. And
18 maybe that's really a model we ought to look at.

19 Personally, that would be much more what I'm
20 comfortable with. I don't want my kids paying for all
21 this stuff. But it's probably better that we have that
22 public base of financing in a way that the public/private
23 sector clearly objects to.

24 Take a little bit of exception to Mr. Helget's
25 comment that landfills will not fail. I believe there's

1 some fairly high level opinions that all landfills will
2 fail eventually.

3 We take exception to the idea of proven track
4 records. People being taken off the hook are being given
5 a lesser financial obligation, because they have some kind
6 of a record.

7 Somebody told me acts of God disappeared as a
8 legal classification or an excuse from California after
9 the North Ridge Earthquake. Essentially, judge said, you
10 know, that's poor construction. We've been having
11 earthquake here. If something falls down, don't blame
12 God. It's the stupid guy who built the building. I think
13 that ought to be taken into consideration when you look at
14 some of these things.

15 Last thing I want to say. Waste Management says
16 they want to step up. In Alameda County when the East Bay
17 Regional Park District took over Davis Street Landfill
18 next to what is in the process of becoming Oyster Point
19 Park, there was leaking on the surface of the landfill.
20 And after a couple of years of litigation, Waste
21 Management finally came up with \$50 million. If you tell
22 East Bay Regional Park District they stepped up, took a
23 lot of twisting their arm and banging in the court to make
24 them step up. But anyhow.

25 So I wish you well in your deliberations.

1 Final thing. Alameda County has a household
2 hazardous waste program. We probably have as good a
3 program as anybody does in the State. We have four places
4 where people can take stuff. After ten years, they
5 compared all the addresses that people give when they come
6 in against the database of addresses from the tax rolls.
7 Less than ten percent of the properties in the county are
8 registered as having come into the household hazardous
9 waste program.

10 Where is all the rest of that stuff? Nobody
11 knows. Is it in the garbage? Probably. Some of it's in
12 the garage. But a lot of it's where we don't see it.
13 I've seen that at a few instances myself.

14 So the fact that all landfills are never going to
15 leak and not going to be a problem, questionable.

16 Thank you.

17 CHAIRPERSON BROWN: Thank you Mr. Boone.

18 Evan, you're wrapping this up. Got to give you
19 four minutes. If you take two and give us two back, we'll
20 give you a bonus later.

21 MR. EDGAR: All right. My name is Evan Edgar.
22 I'm the civil engineer for the California Refuse Removal
23 Recycling Council.

24 I've been on this odyssey with good staff, and
25 we've had a lot of discussion, been well vetted.

1 CRRC is in general support of the regulations.
2 They've gone a long way, a lot of studies, lot of effort.

3 I'm here on behalf of some single private
4 operators. And I take exception to the fact that we will
5 be a default 100 percent, because private operators I
6 represent have been three generations at the landfills.
7 We have compost facilities on top of landfills. We have
8 MRFs. We'll be around. Following the wisdom of Chief
9 Joseph, we'll be around for seven generations. We're not
10 going anywhere.

11 I take exception to that, but we still support
12 the concept of having a 15-year rolling trust fund.

13 I'm a registered civil engineer. As part of
14 stepping down, you have to certify that landfill no longer
15 poses a threat to that environment. I don't know any
16 engineer that would certify some landfills at this point
17 and step out of their professional liability to certify a
18 landfill for being safe for forever.

19 So I believe that by having a 15 rolling trust
20 fund is basically perpetual care. We are opposed to doing
21 that, because the people I represent will be around for
22 the next seven generations on top of the landfill. We
23 have MRFs and compost facilities. Those are the only
24 place in California where we can site and operate those
25 type of facilities, that is valuable land we want to

1 maintain for a long time so we can continue to compost.

2 So on behalf of the CRRC, we're in general
3 support of the regulations.

4 I was around back in 1988 when the Easton bill
5 passed with the same staff, Bernie and Bill, and 20 years
6 later I think they've done a hell of a good job. Thank
7 you.

8 CHAIRPERSON BROWN: Thank you.

9 If you ever need an extra two minutes, call me on
10 it.

11 Okay. As promised, we are taking a lunch break.
12 We do need to come back for some discussion of this item,
13 and we have another item to follow.

14 So I'd like to propose that we go get lunch and
15 come back at 1:30. We're going to do a 15 to 20-minute
16 lunch, because we have things that are backing up against
17 the back of our window here.

18 (Thereupon a lunch recess was taken.)

19

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1 AFTERNOON SESSION

2 CHAIRPERSON BROWN: Good afternoon. Given our
3 ambitious agenda for the afternoon, I think we'll go back,
4 delve right into further discussion on Item 3.

5 For the record, I'll note all Board members are
6 here. You don't need to call the roll.

7 And Bill, Ted, did you have -- Bill and Ted's
8 Excellent Adventure. It's been a year long adventure.

9 Did you have any wrap up comments or anything
10 that you wanted to conclude before we start asking
11 questions and having a discussion?

12 DIVISION CHIEF ORR: To put a nice bow on it I
13 think.

14 I guess just from my perspective, we're happy to
15 get the direction that the Board's ready to give today.

16 Staff is prepared to either just take your
17 feedback in general form, or we can actually walk through
18 sort of the different options that we've gone through if
19 you want to provide any specific direction on any of those
20 issues. We're prepared to do that either way.

21 And then depending on what that direction is,
22 then whether or not there is any need to discuss the
23 detailed comments today or at a subsequent meeting.

24 CHAIRPERSON BROWN: Well, let me ask my fellow
25 Board members. A couple of times I think during your

1 presentation you said there were options and additional
2 information. Is it something that you can go through
3 quickly and that we can continue asking questions or is
4 this another long presentation?

5 DIVISION CHIEF ORR: No. It's just more a matter
6 of framework to pose the three questions we discussed this
7 morning and just sort of highlighting the options that
8 we've already covered, including ones that came through
9 from the public comments.

10 CHAIRPERSON BROWN: Let's start with that. And
11 if we want to add questions or move the dialogue along,
12 we'll just continue as we have some more.

13 (Thereupon an overhead presentation was
14 presented as follows.)

15 DIVISION CHIEF ORR: So for example, and we can
16 decide if this works for us.

17 The first question is: Are the level of
18 long-term financial assurance sufficient?

19 I've got a slide like this for both postclosure
20 and corrective action. And we've just restated here the
21 options:

22 To continue with the current proposal;

23 To increase to a rolling 30x;

24 To increase to the rolling 15x and eliminate the
25 step down;

1 To add a reasonable contingency to the
2 rulemaking;

3 To add major maintenance costs as a postclosure
4 maintenance item;

5 Or to decrease to the 5x for cash mechanisms, as
6 relayed by Glenn Acosta and other stakeholders using the
7 trust fund and enterprise fund.

8 So if you want to narrow that, if you want to
9 provide any general direction on which ones to pursue
10 further in this particular category, then we can move on
11 to the next one.

12 CHAIRPERSON BROWN: We're going to take a general
13 overview and then have a discussion at the dias. So let's
14 just generally overview what you view are the options, and
15 then we'll have a discussion.

16 DIVISION CHIEF ORR: Okay.

17 --o0o--

18 DIVISION CHIEF ORR: So moving on to the
19 correction active options:

20 Again, to continue the current proposal to use
21 the reasonably foreseeable water quality corrective action
22 for nonwater quality;

23 To add a separate level of assurance for nonwater
24 quality costs;

25 To add in the major maintenance cost as an

1 alternative to the water quality -- foreseeable water
2 quality corrective action;

3 To add extraordinary costs in in some fashion;

4 And then stakeholders also commented, some of
5 them, to delete the extension to the five years to
6 replenish the mechanism. So that's the second category.

7 --o0o--

8 DIVISION CHIEF ORR: The third category is how to
9 best protect against divestiture defaults. The one
10 regulatory option that we've presented under this item
11 would be to add a step up to 15 upon the transfer or sale
12 of a property and possibly to include a waiver provision
13 for a buyer with a proven track record.

14 --o0o--

15 DIVISION CHIEF ORR: And then in terms of whether
16 and how to address the remaining default exposure, that
17 would include:

18 Adding back in a step up provision for lack of
19 continued performance or lack of participation and
20 enhanced monitoring;

21 To condition the use of the financial means test.

22 And that was actually something that was brought
23 up during the public hearing, but Bill Magavern didn't
24 specifically -- I can't remember if it was him or Scott
25 Smithline -- but is essentially to condition the use of

1 the financial means test or other mechanisms that don't
2 have a dedicated revenue source or third-party behind
3 them. Depending on how you look at it, that's something
4 the Board may be able to do. But there is also a
5 provision of State law that requires that the Board
6 recognize all of the federal mechanisms. So it's
7 questionable whether that can be done.

8 And then, finally, to find as an acceptable risk
9 with no additional action warranted.

10 So those are the three things from regulatory
11 questions that we uncovered this morning.

12 CHAIRPERSON BROWN: Thank you. You don't have
13 copies of that for us to --

14 DIVISION CHIEF ORR: It's essentially -- well --

15 CHAIRPERSON BROWN: It's a compilation of what
16 we've got.

17 DIVISION CHIEF ORR: It is a compilation of what
18 we went over this morning.

19 I do have a checklist. I could hand out if you
20 want it.

21 CHAIRPERSON BROWN: If we can just make a couple
22 of quick copies, just in case. You have them? Okay.

23 Bill, can you give a quick review of what the
24 contingency fund is?

25 DIVISION CHIEF ORR: Yeah. What a reasonable

1 contingency is, is some percentage greater than the
2 estimated cost that's done as part of the postclosure
3 maintenance cost estimate.

4 The figures that were discussed during the
5 stakeholder process ranged from nothing to 20 percent and
6 thereabouts. I think that the stakeholder group was more
7 in the five to ten percent range. How that equals in
8 terms of financial assurance if you were to have a 20
9 percent cost contingency, it would be equal to about six
10 years worth of financial assurance at the beginning of the
11 postclosure maintenance period.

12 So it also has the effect of if you're using that
13 as a means to step up the level of assurance, it could
14 also prompt early defaults.

15 And the final thing about it is with the changes
16 that we made to cost estimating in the Phase I regulations
17 to improve the rigor of those cost estimates, staff felt
18 that it wasn't necessary to pursue a contingency at this
19 time.

20 CHAIRPERSON BROWN: Thank you for refreshing my
21 memory.

22 Okay. So questions? Comments?

23 You may go first. You don't have to.

24 BOARD MEMBER KUEHL: Okay. I'm not used to
25 working on a Board where members can't talk to each other.

1 So I guess this is where we talk to each other?

2 CHAIRPERSON BROWN: This is where we talk, yes.

3 BOARD MEMBER KUEHL: And I think it is
4 appropriate, because everyone ought to hear the
5 conversations where decisions are made. But it's
6 difficult because in the Legislature, you kind of got an
7 idea where the other guy is and doesn't mean you decided
8 anything. I don't really know that.

9 So I'm just going to jump in and say what my
10 preferences are in some of these areas.

11 I do have a preference for the 30 times rolling
12 approach. The reason I like the rolling approach is that
13 with even a minimal interest paid on the financial
14 assurances, which would be allowed for a draw down for
15 maintenance, it could be two-thirds or close to whatever
16 the annual maintenance cost -- regular maintenance cost
17 might be.

18 That doesn't mean that anybody is going to
19 necessarily agree. But that is really my preference to
20 accomplish the goal of protecting us in cases of against
21 the negative environmental impacts and protecting us as
22 well as possibly in terms of what the State would be
23 required to step up and do.

24 And the second piece I would like is, in the area
25 of corrective action, I do not feel right now that we have

1 a real solid plan. And my preferences for the element of
2 it would be to include nonwater-related corrective actions
3 as they might exceed water-related corrective actions.
4 And that information we don't really have. We're saying
5 we think that would be more.

6 So I'd like to see a plan that addresses the sort
7 of unassured corrective action risk that might be
8 generated by including nonwater-related corrective action
9 and major maintenance, which I don't quite know how to put
10 a price tag or haven't been told how we put a price tag on
11 that. But I think that's part of the corrective action
12 fund.

13 I do think we should consider talking to the Air
14 Board about since a lot of the corrective actions that are
15 not water related are air related. So it could be a plan
16 that would address unassured corrective action risks
17 related to nonwater-related corrective action, major
18 maintenance, and I guess some expertise from the Air Board
19 about what that might be.

20 In terms of divestiture, I think we have to look
21 at a pooled fund. And that that's a conversation for the
22 next item. I realize that if we don't get it, we have to
23 figure out more about that. But that's a hard one.

24 But I would ask the staff to make some
25 recommendations to address the challenges for landfills

1 that are already money in the bank and drawing down. It
2 changes the game plan for them. And would just like -- I
3 realize it's always going to be just options to us. But I
4 don't feel like I really understand enough what the option
5 might be most specifically for those.

6 In terms of the pooled fund, again, I mean the
7 pooled fund we'll discuss this much further. I'm very
8 sympathetic to the differences between the public and
9 private risks and not asking the public necessarily -- the
10 public owners to necessarily be doing a lot of the funding
11 that might be related to private owners. So that doesn't
12 cover all the check boxes exactly, but that's -- since I'm
13 the first one to talk, that's where I'm at.

14 CHAIRPERSON BROWN: It is sort of a dialogue, but
15 I have many of your issues.

16 So I think Bill is taking notes. I'm taking
17 notes. Thank you for going first.

18 I think Carole.

19 BOARD MEMBER MIGDEN: I don't -- I think it might
20 be easier, Madam Chair, to respond to some motions and
21 speak to them, because if it's not -- for instance,
22 Senator Kuehl indicated she's right off not necessarily
23 with staff recommendations, that proposed recommendation
24 will likely fail.

25 Maybe we can begin to use the time

1 constructively. I mean, I'm predisposed to many of the
2 directions that Senator Kuehl just stated, and I have a
3 concern about financial solvency as I indicated. I might
4 be interested in more triggers. So I can say to move this
5 along, I am very aligned with the point of view that Board
6 Member Kuehl. And perhaps a little tweaking on that.
7 So --

8 CHAIRPERSON BROWN: Okay.

9 BOARD MEMBER LAIRD: Madam Chair --

10 CHAIRPERSON BROWN: I think the direction you're
11 going, Carole, is if we're to look at like a motion, it
12 would be Option 3, which is to develop additional language
13 and options for us to explore.

14 And Sheila's specified several that she would
15 like to get more information on. Carol's associated
16 herself with some of those. And I think I have a few that
17 I've taken notes on that I'd like additional information
18 on. So let's keep and -- John, and then we'll have
19 Rosalie and wrap this up.

20 BOARD MEMBER LAIRD: I was going to originally
21 make a comment along the lines of you process wise,
22 because it seems to me that we are all going to go in a
23 slightly different place. And rather than lock ourselves
24 in in voting something down, hear where we all are and see
25 where we can go with it, because it's clear we're not

1 going to get to a specific place today. But we can get to
2 a direction potentially and special questions that help us
3 flush out that direction.

4 CHAIRPERSON BROWN: That was my intent.

5 BOARD MEMBER LAIRD: And in comments, I would
6 sort of associate myself with most of what Sheila said.

7 But I think I'd like to talk just a little bit
8 about some of the factors in how we have to try to take
9 the next steps in thinking about this.

10 And the thing that's interesting to me is I voted
11 for this bill, as I'm sure there are a couple of other
12 people up here did. When you're in the Legislature, you
13 think, oh, this is signed into law in the fall of 2006 and
14 you set deadlines in 2008. That's way off into the
15 future. So it's real interesting to see the practical
16 part of that.

17 And I have met with many of the people that
18 talked in different configurations. So I apologize for
19 the fact some of the stuff I might have said.

20 But there were some things in the testimony that
21 were very helpful and I think made examples. And the
22 example I used in many of the meetings is the example in
23 my former legislative district of the fact there was some
24 tremendous perchlorate pollution for 50 years. Highway
25 safety flare company threw it out the back door, and it's

1 got a nine-and-a-half mile plume. And it's effecting 1500
2 private wells are tested regularly. Five-hundred of them
3 haven't been able to use their personal wells for six
4 years for personal use in water.

5 And at the time it was done, the company in
6 question is Ollen, which purchased the safety flare plant
7 at one point and inherited all the liability. At the time
8 Ollen was at its height, it had 45,000 employees. Now it
9 has 9,000.

10 And we constantly over the six years were in this
11 dilemma of pushing them to do the maximum amount they
12 could do. And they were corporately very responsible in
13 replacement water, in reverse osmosis and the things that
14 would take us out of this.

15 But knowing they had scaled down and had limited
16 resources, every day we faced are we going to push them
17 too far and they're going to go into bankruptcy and
18 they're not going to have enough financial wherewithal to
19 deal with it?

20 When Mike was testifying earlier and he said, you
21 know, I think the landfill that might have been Duarte was
22 coming up and there was a debate about perpetuity, well, I
23 think the point Mike was trying to make is, well,
24 perpetuity was different when you looked at it in the 60s
25 as how you might have looked at it right before the

1 federal regulations came into effect and landfills closed
2 or how you looked at it for those landfills that were
3 closed by the Water Board where they might not have fully
4 capitalized in the resources we're talking about here.

5 So you can say perpetuity, but there is a whole
6 difference of perpetuity as to what era and what
7 regulations you look at it under as you move ahead.

8 And just as the balance you try to do with the
9 company to make sure that they provide adequately but you
10 don't push them into a point they're in bankruptcy, that's
11 a balance I've found hard to understand in going through
12 all of this is to where it is in relation to the different
13 options and where you might push some and where you might
14 not. And yet I think it should guide our outcome.

15 And for me, I generally subscribe to something
16 that's closer to the 30x. But, you see, what would be
17 helpful is to have that as the recommendation or that as a
18 studied featured option and then ask these questions we
19 have about the balance against it.

20 So that if, in fact, it was the staff's belief or
21 it'd probably be a lot of people's belief for one reason
22 or another that it pushes more people into default, is
23 that true? I don't know that it's true. And if it is
24 true, where does that push us financially? And if you
25 pulled back a little to put less in default, does that

1 truly have an impact? Or if it doesn't, can you using the
2 higher standard figure out a way?

3 Because if you look at the charts the staff
4 prepared, 30x was the place that everything crossed in the
5 right way for long-term coverage. And that was the thing
6 that was significant.

7 And I think that just so many points were made
8 just need to be acknowledged, because you hope that
9 there's some recognition of the munis versus the privates
10 so that you're not relying on public money, because
11 agencies will never go away to deal with private agencies
12 that might go away. That that's a transfer of funds.
13 That's a subsidy, and you have to be sensitive to that not
14 happening to any dramatic degree in how you do this.

15 The big ones I think I might have subscribed to
16 the testimony about we're big. We have financial
17 resources. We are not going away, up until last September
18 15th or October 1st when I think that whole equation
19 changed.

20 And it's interesting, because I'm sure if you
21 pulled out the Dow Jones equivalent from the 1950s and
22 looked at the top ones, you'll be amazed at the
23 metamorphosis and people's financial wherewithal through
24 that period. And you just have to be conscious of that.
25 And we have the bottom line that we don't want to be so

1 inadequate at some point of what we do that we're shifting
2 the burden to the taxpayers, because we have not taken
3 sufficient action from those that used the landfills to
4 care for them going out.

5 And the other thing is I asked the question, and
6 it was answered. But just in case there is some more
7 flushing out to do, what might be some ability on money
8 that's put aside to have companies be able to leverage it
9 in case we do require a higher amount? Something that
10 might give them a little more flexibility while still
11 preserving it for our use is an important thing.

12 And then also I'd like to acknowledge that we got
13 the two legislative letters. I don't think we should
14 automatically decide since they want to cut us some slack
15 we should take the slack, but I think we should be
16 prepared to if we need the time to do the right thing.

17 And I think we also should maybe, even though
18 they've given us cover, it's possible in the budget
19 trailer bill or something else to seek formal cover of a
20 six-month extension or something if it turns out we know
21 in a not-too-distant future we're going to need it.

22 CHAIRPERSON BROWN: Right. I indicated to Sheila
23 this morning I would like to respond to Senator Simitian
24 and Assembly Member Skinner, at least knowledge and
25 appreciate their interest in working with us.

1 Our intention is to meet the deadline. But
2 you're right, if we find that as we move through this we
3 do need more time, we certainly have that option that I
4 think we would be -- it would behoove us to exercise to
5 ensure we get a good work product at the end. I think
6 you're right.

7 BOARD MEMBER LAIRD: So for me, in summary, I
8 think I would like to go for something in the 30x range,
9 but see what problems does that create. Do we need to
10 talk about them in a way that there might be adjustments
11 we need to make or where we get a sense of how that would
12 or wouldn't work?

13 BOARD MEMBER KUEHL: I'm not sure how much more
14 information can we have about whatever the estimated risk
15 is except what the contractor kind of gave us.

16 BOARD MEMBER LAIRD: Well, since I raised the
17 question, and to me, I think it started to be this
18 movement or mindset to whatever it was, the 8x, 9x kind of
19 thing, and it was inferred in many ways there might be
20 defaults that keep us from going higher. If we say we're
21 going to go higher, it forces people to bring those things
22 out and toss them into the debate in a very clear way.

23 And that's why I was saying that's my preference.
24 But let's shoot at it and make people be clear if they
25 think there are things that are problems presented.

1 BOARD MEMBER KUEHL: So far, I didn't hear
2 anybody say they liked step up, step down, let's measure
3 good behavior, bad behavior, so far.

4 BOARD MEMBER LAIRD: Well, that's an introduction
5 to Rosalie.

6 BOARD MEMBER MULÉ: Thank you so much for that
7 segue.

8 Thank you very much, Madam Chair.

9 I have been to, not all, but nearly all of 21
10 workshops that have been held since 2003. I think my
11 first workshop was October of '04.

12 I will tell you someone said at our Committee
13 meeting last week that just because progress is slow does
14 not mean progress has not been made. I couldn't agree --
15 this issue exemplifies that more than any that I've been
16 involved with while here at the Board.

17 This is a very complex issue. And there are, as
18 Scott Smithline stated earlier today, there are so many
19 inner-related parts to this. And so, I, for one
20 appreciate all of the work of our staff, Bill, you and
21 your team, the exercises that you've done at some of the
22 workshops. I mean, again just all in the spirit of trying
23 to understand what it is we have before us and figure out
24 how to best deal with this to not only protect the State,
25 but to protect our environmental interests as well.

1 I also wanted to say I do appreciate all the
2 input of all the stakeholders, the work group. I mean,
3 you all have put in countless hours on this. And I will
4 tell you those workshops were valuable from the
5 perspective that we could have had two or three workshops
6 where we felt like we weren't moving forward, and then all
7 of a sudden in one workshop, it was like the lightbulb
8 went off in everybody's head.

9 And that's how we've progressed to the point that
10 we are. And believe me, we've made great progress in the
11 last four years, I mean, even prior to and after 2296.

12 And I will tell you that even if we move forward,
13 when we move forward with the Phase 2 regulations, that
14 doesn't end the dialogue there. I mean, I truly see
15 this -- I've stated this before. I see this as an ongoing
16 dialogue, because there are issues, some of which Sheila
17 mentioned, that we're not going to resolve today, we're
18 not going to resolve in a couple of months. But at least
19 if we could move forward and show that we're continuing to
20 progress on this complex issue, I think that we can all
21 sleep well at night.

22 I do feel that we should choose Option 3, develop
23 additional regulatory language and return with additional
24 rule making direction. I feel that, for me, I've been
25 through enough discussions where I'm comfortable with the

1 15x, rolling 15x. But I think again as some of the other
2 Board members have stated, I think we need to really look
3 at the data behind all of this. I mean, that is the crux
4 of the issue for me. What is the basis for these
5 recommendations?

6 And so I think we really are going to have to
7 have a thorough evaluation that you present to our Board.
8 I mean, we want to see all the data. We want to know all
9 the details so that we can then make the sound policy
10 decisions that we're comfortable with.

11 You know, again on the corrective action issues,
12 how did we arrive at the recommendation that you're
13 making? Again, I sat through countless workshops where we
14 had lengthy discussions about this. And I think it would
15 be helpful for my fellow Board members to have a better
16 understanding at how we arrived to where we are today.

17 So with that, I don't want to belabor all of
18 this. But in summary, I just feel there is a number of
19 issues that we need to have further discussion on. And
20 that in addition to the fact that we did receive two
21 letters from Assembly Member Skinner and Senator Simitian,
22 I think again we need to move forward in a thoughtful
23 manner on this issue.

24 Thank you, Madam Chair.

25 CHAIRPERSON BROWN: Okay. I think that pretty

1 much draws the consensus about where I think we are.

2 You've heard it a thousand times. I probably
3 don't need to repeat it. I've told you privately, you and
4 your group, Bill, Ted have done an excellent job. They're
5 all sitting behind you. Thank you all for doing a great
6 job in shepherding through this process. It's been an
7 exhaustive process of research and analysis.

8 And I think we've done the research. Possibly a
9 little bit more analysis or tweaking the numbers is what
10 we're looking for at this point. But given the complexity
11 of the issues as Rosalie mentioned, and I think we all
12 fettered out, it's crucial that we do the right thing
13 here.

14 I appreciate all of the input. And you know,
15 Bill, for your sponsorship of the bill, it's gotten us to
16 where we are. I think we have a unique opportunity to
17 improve upon what we have before us today. And I think
18 that came from all of those people who testified is that
19 we are not quite there today. I don't know that moving
20 something just to get something today is the right move.
21 I think that we need some more information. We've given
22 you somewhat of a list, and I will make a list.

23 But as we've gone through this process, I think
24 we've become much more sophisticated in our thinking, our
25 analysis, the way we look at things, as Rosalie mentioned,

1 the options we have on the table on corrective action,
2 financial assurance. We've gone back and forth on the
3 contingency. We have many more tools in our toolbox than
4 we did when we started this process.

5 And I think we need to pull a few more of them
6 out and look at some of those options, you know, whether
7 it's a pooled fund. You know, I think a pooled fund makes
8 a lot of sense for a lot of reasons. I can appreciate the
9 complexity of the issues between the publics and the
10 privates, and that's something we'll have to work on or
11 the Legislature work on. But make some recommendations on
12 how we cross those bridges.

13 You know, having the privates not fund the
14 publics and vice versa.

15 And then the complexity of the issues with
16 divestiture and what happens if you sell one to the other.

17 So we have a lot more work to do, but I think
18 that where we are today is far superior than where we are.

19 I think absent a pooled fund, I do believe we
20 need to look at greater assurances. But I would also
21 support if there is a pooled fund created going back and
22 either having some triggers in place. That once a pooled
23 fund is created, those triggers kick in. And those
24 options, I don't know if those can be explored or we can
25 have a conversation that would explore some of that,

1 because we don't have a pooled fund. We moved forward on
2 the Phase 2 regulations working towards a pooled fund, and
3 it wasn't created. So I think we need to assure that we
4 are covered there.

5 So what I'd like to recommend with consensus from
6 the dias is that we move Option 3, which is to ask you to
7 go back and refine some of the information, come back to
8 us.

9 Several of the members are leaning towards the
10 30x. We need a little bit more information. If you could
11 find information for us so we could have a more robust
12 discussion on the financial options of the ability to
13 utilize the funds or leverage those funds, that's one that
14 especially in the current economic situation a couple of
15 us would like to see.

16 I think we also need to explore further and have
17 a greater understanding of corrective action and what our
18 options are. You know, if we do 30x and corrective action
19 or 30x, you know, all of that.

20 And also take a look at corrective action major
21 maintenance and what falls inside and outside of PCM.

22 Divestiture we're going to discuss on the next
23 item.

24 I think that I believe it was Bill Magavern who
25 suggested we look at two or three landfills around the

1 state and do a model. That would be really very
2 beneficial to have that information to just sort of model
3 two or three of the large or maybe a medium and a large.

4 And then Sheila brought up the issue that I think
5 we probably could utilize more information on as well.
6 What do we do with closed landfills, those that are
7 currently in the closure mode, and what our options are
8 should we adopt a 30x and how that would play out for
9 somebody that's in their PCM period.

10 Did I capture everything?

11 Our intention, as I mentioned, we intend to
12 adhere to the July 1st deadline. So we'd like this
13 information back, and we'd like to review the item in May.

14 At that time, we can either approve and direct
15 staff to go out to an additional comment period. So my
16 understanding is we hold these regs open without changes.
17 We can go out to an additional comment period. And at
18 that time, we'll decide the length of the comment period.
19 It could be 15, 20, 30, 45. And at that time, you know,
20 we'll know whether we need to seek additional time from
21 the Legislature for our report.

22 PROGRAM DIRECTOR RAUH: Just if I could. One
23 comment with respect to all of the items you've listed.
24 We certainly can be prepared to discuss them with you in
25 May, with one area that we'll have to sculpt to be able to

1 do that, and that is this actually doing the model of
2 landfills. That has been discussed at length in previous
3 workshops. And we will put something together within the
4 time frame you've given us that we'll do that. But I just
5 wanted to make that one caveat.

6 CHAIRPERSON BROWN: Okay. Thank you. I think
7 that concludes that item.

8 We're going to move to Item 4. We may end up at
9 Item 4 doing the same thing, given some of the complexity
10 of the issue we're facing that we may need to come back in
11 May with some additional direction on the item. Let's
12 delve into it and see how far we can get.

13 PROGRAM DIRECTOR RAUH: I'm not going to take any
14 time to introduce it, other than to say basically the same
15 information, plus all of the record of today's hearing
16 really go into this issue.

17 Bill is going to try -- not try -- will make the
18 same high quality presentation, only now dealing with the
19 potential statutory options. Bill.

20 (Thereupon an overhead presentation was
21 presented as follows.

22 DIVISION CHIEF ORR: Thanks, Ted.

23 --oOo--

24 DIVISION CHIEF ORR: I'm going to dive into this
25 particular presentation. The way we've organized this

1 presentation is we posed similar policy issues, questions
2 that we did in the previous item. But then we're also
3 seeking the guidance on how to actually format the report
4 to the Legislature in terms of how long, how much detail,
5 how do you want it basically structured. So that when we
6 bring it back next month for your adoption or the month
7 after that we're hitting the target as close as possible
8 in that regard.

9 So I think we can go through the policy part
10 fairly quickly, because many of the questions are ones
11 we've already talked about pretty extensively.

12 What I'm going to focus on is essentially the
13 statutory options that are companions to the regulatory
14 options we talked about already.

15 --o0o--

16 DIVISION CHIEF ORR: So two of the questions
17 essentially are carryovers from the previous item.

18 One is: How to best protect against divestiture
19 default exposure to the State.

20 And the second one is: Depending on how much is
21 left, whether and how to address the remaining default
22 exposure to the State.

23 Then to sort of flush out the requirements of
24 2296, are there any other related statutory changes that
25 are needed?

1 And then, finally, just to keep in mind -- it's
2 already been occurring today. But just as a reminder, how
3 to dovetail the statutory recommendations with the
4 regulatory approach that would emerge from the previous
5 item.

6 --o0o--

7 DIVISION CHIEF ORR: In terms of moving on to the
8 first question of how to best protect against divestiture
9 of defaults, these ones are looking at changes that we
10 couldn't do, because the Board doesn't currently have the
11 statutory authority. We had a fairly protracted
12 conversation about is it the owner or the operator: How
13 do financial assurances go?

14 Well, this is sort of a complementary issue to
15 that, which is right now the Board only has the authority
16 to require financial assurances and meeting liability
17 requirements for the owner/operator, current
18 owner/operator. This would seek through statutory change
19 to keep the former owner and operator liable.

20 Second option would be to make generators and
21 other folks that use the landfill or otherwise arrange for
22 the waste to be liable.

23 And then finally, you could size a pooled fund to
24 cover the divestiture defaults.

25 --o0o--

1 DIVISION CHIEF ORR: I'm going to skip this
2 chart. We've seen it already. And move right into the
3 pros and cons in terms of keeping former owners and
4 operators liable.

5 --o0o--

6 DIVISION CHIEF ORR: The pros are it would
7 provide the statutory authority very similar to that that
8 the Water Board already has on water quality matters.

9 It would broaden the responsible parties in case
10 of a default after a transfer.

11 It would likely increase the due diligence that
12 would be performed by the seller before they sell to
13 somebody, realizing it may come back to them if that new
14 buyer's unable to meet their obligations.

15 And finally, it works well in combination with
16 other options. So you could pick another regulatory
17 option from the previous item, and you could combine it
18 with this one if you so chose to further address the
19 divestiture issue.

20 CHAIRPERSON BROWN: Question.

21 BOARD MEMBER KUEHL: I'm sorry, Bill. I don't
22 get this.

23 How does it broaden the responsible parties?
24 You're saying the owner/operator remains responsible and
25 the new owner assumes some portion of the liability or has

1 to post new assurances or what?

2 DIVISION CHIEF ORR: It would mean that the Board
3 would have the option if there is a default by the new
4 owner or operator and the financial assurance mechanism is
5 depleted that you would then be able to go back to a
6 former owner or operator and seek -- if they are a viable
7 entity. And I'll get to that in a second. But you would
8 be able to go back to a former owner of the property to
9 fulfill those obligations.

10 Now, that only works like on the con side if the
11 previous owner or operator is still viable. So if that
12 entity no longer exists at some point in time, you
13 wouldn't have anybody to go back to.

14 But essentially the idea would be right now we
15 can only focus on the current owner/operator under our
16 law.

17 BOARD MEMBER KUEHL: I understand that. That is
18 what the Water Board does?

19 DIVISION CHIEF ORR: The Water Board has broader
20 authority than that.

21 BOARD MEMBER KUEHL: Really?

22 DIVISION CHIEF ORR: Yeah.

23 BOARD MEMBER KUEHL: So they can hold virtually
24 anybody responsible that had something to do with --

25 DIVISION CHIEF ORR: They can hold former

1 dischargers responsible for corrective action and things
2 like that at some point in the future, yes.

3 BOARD MEMBER KUEHL: Only in the case that the
4 new owner fails or without conditions?

5 DIVISION CHIEF ORR: I believe that Ed Wosika
6 from the State Water Board is out in the audience.

7 My understanding is it would be a last resort.
8 You wouldn't go back to a former owner/operator unless you
9 had to.

10 BOARD MEMBER KUEHL: Thank you.

11 DIVISION CHIEF ORR: So continuing with the cons,
12 several stakeholders say it's not necessary. There is
13 little benefit as I mentioned if the previous operator is
14 not viable any longer.

15 And then the other comment is that after you've
16 sold it. You really have little control over how it's
17 operated, maintained, designed, constructed, whatever, and
18 so you're being held responsible for something you can't
19 really control.

20 --o0o--

21 DIVISION CHIEF ORR: Now, the next option is to
22 make generators, transporters, arrangers, people that use
23 or are responsible for the oversight of the landfill
24 liable also. That would provide the Board with DTSC-like
25 superfund-like authority.

1 It would broaden the parties responsible in case
2 of default after the transfer.

3 It also would work well in combination with other
4 options. In fact, it would build on the previous option
5 we just looked at.

6 Similarly, the cons are that it's not necessary.

7 That it will mostly come back to local government
8 where there may be a transfer from a public entity to a
9 private entity or vice versa. It's likely to come back to
10 the local government one way or the another.

11 Similar to the last slide but even more so,
12 there's little control over the daily activities at these
13 sites by these other broader group of folks.

14 And would likely as with a lot of superfund would
15 result in lengthy expensive litigation for little gain.

16 --o0o--

17 DIVISION CHIEF ORR: Then moving on to the third
18 option here would be to size a pooled fund to cover.
19 Again, the divestiture is the largest component of
20 exposure to the State.

21 The pro for covering it under a pooled fund would
22 be it's a more cost effective approach than requiring the
23 higher levels of individual financial assurance that we
24 just got done speaking about.

25 On the cons, there's general stakeholder

1 agreement that divestiture is best addressed by other
2 means.

3 It could also further incentivize divestiture if
4 you had a pooled fund that supposedly was going to cover
5 it. They would say I'm just going to divest.

6 And then finally, the public operators, in
7 particular local government, feels this would result in
8 subsidizing largely a private landfill problem.

9 BOARD MEMBER KUEHL: Did the stakeholders say the
10 other options they preferred, and were they one of the
11 first two?

12 DIVISION CHIEF ORR: I would say that issue of
13 what they prefer is largely unaddressed. I think they
14 know what they don't want, but we don't have agreement on
15 what they do want.

16 BOARD MEMBER KUEHL: When you say best addressed
17 by other options --

18 DIVISION CHIEF ORR: That means take it off the
19 table.

20 BOARD MEMBER KUEHL: We don't exactly know what.

21 DIVISION CHIEF ORR: That's correct.

22 --o0o--

23 DIVISION CHIEF ORR: And then in terms of whether
24 and how to address the remaining default exposure, one
25 option would be to recommend a statutory change to

1 establish a pooled fund size to cover this remaining
2 divestiture or remaining default or to find that it's an
3 acceptable risk and take no further action.

4 --o0o--

5 DIVISION CHIEF ORR: In terms of the pros and
6 cons, it would further reduce the exposure to the State.

7 Similar to the last option, may provide a more
8 cost effective means rather than achieving higher levels
9 of individual financial assurance for the incremental
10 difference.

11 BOARD MEMBER MIGDEN: Madam Chair, just quickly,
12 maybe we could look at this -- I like this pooled fund
13 idea, but maybe it should be separate for privately owned
14 landfills versus public so the public isn't subsidizing
15 private ownership.

16 So I would say to you if we're going to look at
17 that, Madam Chair, maybe you could give us a couple of
18 splits on it, because in terms of all these issues and
19 just lastly about surety or solvency, the pooled concept
20 gives you the cash. You spread it out just a little bit,
21 it's kind of fair and reliable.

22 CHAIRPERSON BROWN: Exactly. Well, I think that
23 is a good option, Bill, to make sure we look at how you
24 would split it and how you would create the different
25 scenarios.

1 DIVISION CHIEF ORR: Okay. And then on the con
2 side, as I talked about before, some level of default is
3 inevitable, that no additional action is warranted. And
4 in particular in these poor economic times, it is a
5 challenge for a fee increase.

6 --o0o--

7 DIVISION CHIEF ORR: So this basically gets to
8 the pooled fund options. I'll go through it very quickly.

9 The next slide will actually talk briefly about
10 Board Member Migden's comment.

11 As far as the pooled fund option, there are two
12 things to look at. One is what do you want to cover? How
13 much is that going to cost? It could be the remaining
14 defaults. You could add divestiture. You could add major
15 maintenance and/or extraordinary corrective action.

16 One of the things that was talked about early on
17 in the process was an approach that Minnesota took similar
18 to their pre-subtitle D landfills was to assume the
19 responsibility for all the landfills in the state that
20 participated in the program.

21 Now, the general stakeholder agreement is that
22 that would produce a very large pooled fund, very
23 temptingly large pooled fund. And also it essentially
24 would mean that pooled fund would have to be sized to
25 cover the entire system costs that we talked about. So

1 we're talking about billions of dollars instead of tens of
2 millions of dollars.

3 CHAIRPERSON BROWN: Well, we have a question and
4 then --

5 BOARD MEMBER KUEHL: Just in terms of the issue
6 of default and the issue of divestiture, how do you define
7 default?

8 DIVISION CHIEF ORR: Well, default is when an
9 owner/operator of a landfill is unable or unwilling to
10 perform either the postclosure maintenance or the
11 corrective action in a timely fashion. It can be either a
12 temporary default, say, two to five years, or it could be
13 a permanent default where a company would go into
14 bankruptcy. But essentially they are unable or unwilling
15 to do the work they're required to do.

16 BOARD MEMBER MIGDEN: Is bankruptcy also a
17 divestiture?

18 DIVISION CHIEF ORR: The term we've been using
19 for the divestiture is mainly focused on when there is a
20 sale or transfer of the property and then that party that
21 buys it goes bankrupt later on.

22 It's really divestiture is a subset of the
23 overall default arena. It's just a single large piece.
24 It's the biggest piece.

25 BOARD MEMBER KUEHL: But you also mean a sale,

1 which could mean no failure in assurances?

2 CHAIRPERSON BROWN: Right.

3 DIVISION CHIEF ORR: Right.

4 So we've already talked about the chart. This is
5 the second chart that goes into if you look at corrective
6 action, do you want to include major maintenance or
7 extraordinary corrective action?

8 CHAIRPERSON BROWN: Bill, let me interject here.

9 I think one of the things that was helpful at
10 least to me as an understanding in our last item, you said
11 by adding major maintenance costs to regular PCM, it added
12 about six years to the years of.

13 When we start looking at some of these, you know,
14 as you do the calculations for real dollars or whatever
15 we're looking at, it would be helpful by adding major
16 maintenance costs how much that's going to add or by
17 adding corrective action how much that will increase the
18 liability or requirements of assurance.

19 DIVISION CHIEF ORR: Sure. And we have that
20 information. And we've done those kinds of scenarios
21 before. It depends on what universe you're looking at.

22 One thing I will say on this slide is if you look
23 at the major maintenance the system cost of \$700 million
24 over 100 years, if you were to say we want all of the
25 landfills to include the closure cost as a measure of

1 major maintenance, instead of being \$700 million in a
2 pooled fund, that would equate to more like \$2.3 billion.
3 So those we can come back with some more illustrations
4 like that on the choices and how that might play out.

5 So yes, we'll do more of that. But that's just
6 an example from that slide.

7 --o0o--

8 DIVISION CHIEF ORR: This gets to the point that
9 Member Migden just mentioned in terms of how to structure
10 a pooled fund.

11 The two we've been talking about, we've done
12 other variations on it as well. But one would be a
13 combined pooled fund which would be where the public and
14 private would pay into the same fund.

15 And the separate one that's come up is a split
16 pooled fund where the public and private operators, their
17 money would be reserved in one of two subaccounts. And
18 there are some sub-issues there. We can bring those back
19 for further conversation.

20 But once you decide what you want to include,
21 then you can figure out how you want to divide it up and
22 go from there.

23 Does that make sense?

24 CHAIRPERSON BROWN: It does.

25 I think that one thing that would be helpful in

1 the discussion or analysis that you're doing at least from
2 my perspective is the separate size of the pooled fund.
3 If we talk about a split fund, it will be different.
4 What's the appropriate size and why? Because I think the
5 bill that was in the Legislature had an amount, and if you
6 draw down on it, you had a certain number of years to
7 bring it back up and everybody pays it. Is it 50 million?
8 Is it 20? You know, we draw on it. We wouldn't assume
9 major catastrophic failure on all of our landfills all at
10 the same time. So if you have a failure, you pay back in
11 five years, what's the appropriate size?

12 --o0o--

13 DIVISION CHIEF ORR: And then moving on to the
14 other things that the Board may consider as making other
15 statutory recommendations, this one gets to another point
16 that was raised this morning about possibly adding the
17 local air district as an approving agency for closure and
18 postclosure maintenance plans.

19 And then a second one would be to seek repeal of
20 the requirement that all federal financial assurance
21 mechanisms be offered in California.

22 --o0o--

23 DIVISION CHIEF ORR: In terms of the pros and
24 cons for adding the local air district as an approving
25 agency, on the pro side, it would move toward the

171

1 integrated closure and maintenance of landfills. Everyone
2 has their own authority, but we don't always talk as much
3 as we should. And this would be an opportunity and a
4 formal way to do that.

5 Would also help resolve any jurisdictional issues
6 that were raised actually during our informal process
7 dealing with cost estimates. And you have to include the
8 gas system. If it's only there because of air issues and
9 not because of lateral landfill gas migration, it would
10 also enhance coordination with global climate change
11 reduction efforts that are ongoing and that we're
12 intimately involved in.

13 On the con side, it would add another level of
14 regulatory review. This particular option has not been
15 vetted yet with the stakeholders. You know, it's
16 sometimes getting an approved closure/postclosure
17 maintenance plan is like herding cats, and it could be
18 another cat. That I would say is the main con on that
19 side.

20 --o0o--

21 DIVISION CHIEF ORR: And then moving on the issue
22 of seek repeal of requirements that all financial
23 assurance --

24 CHAIRPERSON BROWN: Can I ask you a question
25 going back to the last slide?

1 Why would we add another level? Not that I'm
2 opposed to it. I didn't really hear a why you're adding
3 that, other than cross media.

4 And part two of that question is what is our
5 review process with the Water Board? Because we have
6 concurrent review, and they look at them, and we just
7 don't have that with the air district?

8 DIVISION CHIEF ORR: That's correct. California
9 is complicated. Our jurisdictions are not what I think
10 the federal EPA was thinking about. Even though they're
11 sort of organized that way at the national level by media,
12 they think of states of having all of the regulatory
13 functions in one agency.

14 So when they set up Subtitle D, they have like
15 six criteria. One of those is the air criteria, which
16 cross references the authority of Air Boards and Air
17 Districts under the Clean Air Act. While they're still
18 thinking these folks are all part of one agency and are
19 housed in one place, that's not how it is here. And so
20 how Subtitle D, the federal landfill regulations, reflect
21 that air criteria is complicated.

22 What we currently do -- so they're not really
23 involved formally in reviewing closure/postclosure
24 maintenance plans at this point in time.

25 How the current review process works is that the

1 Integrated Waste Management Board is the coordinating
2 agency for the review and approval of postclosure and
3 closure maintenance plans. When the operator sends their
4 plans in --

5 CHAIRPERSON BROWN: Bill, I don't need all the
6 steps. I just needed a brief answer to why you're adding
7 them. Do we need their review because of Subtitle D and
8 what do we do with --

9 DIVISION CHIEF ORR: I think it would help with
10 Subtitle D, also with the global climate change. The
11 three things, the jurisdictional issues that I mentioned
12 earlier.

13 CHAIRPERSON BROWN: I didn't mean to cut you off.
14 I think we're getting to a longer answer than I was
15 looking for.

16 DIVISION CHIEF ORR: The short answer is we are
17 the coordinating agency. After all that we've received
18 responses from the other folks, then we are the final
19 approvers of the closure plans. And we would envision
20 something like that with the local air district.

21 CHAIRPERSON BROWN: Okay.

22 DIVISION CHIEF ORR: And then on the con side --
23 let's go to the pro side here first.

24 This is seek the repeal of requirements that all
25 financial assurance mechanisms in federal law be offered.

1 It would give the Board flexibility to eliminate the use
2 of mechanisms that are not backed by a third party or with
3 a dedicated revenue source, which as I mentioned in the
4 previous item, we can condition a financial assurance
5 mechanism, but not ban it all together, which could result
6 in further reduction in the default exposure to the State,
7 where if you have that default and there's nobody actually
8 there to back up that mechanism, that would reduce the
9 effect of those defaults.

10 One of the cons on this side is a number of the
11 large waste management companies that do business in
12 California are doing business in other states. And as you
13 heard from some of them this morning, they would prefer
14 consistent requirements between states.

15 BOARD MEMBER LAIRD: I like that one, because the
16 real issue is not interstate waste management companies,
17 it's intestate waste management companies.

18 --o0o--

19 DIVISION CHIEF ORR: So unless there's any
20 specific additional comments on that, just as a reminder,
21 several of these options could be used in lieu of the
22 regulatory options that we talked about in the last item.
23 They could also be used in combination as we've touched on
24 in a couple of cases already.

25 Or for example, if you wanted to do something

1 where a certain provision in the regulations might sunset
2 if a pooled fund were in place, those interactions are
3 important to keep in mind.

4 PROGRAM DIRECTOR RAUH: I'd say that the matrix
5 that we passed out in your deliberation on the last item
6 also helps to reflect that as well.

7 DIVISION CHIEF ORR: So if you look at the right
8 side, that's the side dealing with the options that I just
9 reviewed on the statutory side.

10 I think that concludes my presentation on the
11 policy option side.

12 --o0o--

13 CHAIRPERSON BROWN: Okay. We do have four
14 speakers. So unless we have any specific questions of
15 staff, I'm going to move to the four speakers. And I am
16 going to keep everybody to five minutes hard and fast.
17 I'll give you a warning, because we do want to have
18 time -- four minutes. You can say what you can say in two
19 minutes.

20 Glenn Acosta followed by Mike Mohajer.

21 Sorry, I'm no longer accepting speaker slips.
22 I'll give you Evan Edgar's two minutes from the previous.

23 MR. ACOSTA: Good afternoon, Madam Chair and
24 Board members. Again, Glenn Acosta with L.A. County
25 Sanitation Districts.

1 Real quickly, when we previously supported a
2 pooled fund, it was under the assumption that there would
3 be a reasonable financial assurance framework. The
4 proposed framework is untenable as is. 30x is certainly
5 even more untenable for us. Just not doable for cash
6 demonstrations. And so if you're adding both things
7 together, we just can't support that.

8 The original premise for supporting the pooled
9 fund for us, especially a split pooled fund where you have
10 two separate pools of money, one for public, one for
11 private, was that it was a low-cost insurance that
12 provided some level of security for the State, and a low
13 cost option for us, and yet it maintains some
14 reasonableness on the financial assurance part of things.
15 But as discussed right now and as proposed in the
16 regulations, I don't think we can support both.

17 And then there was another option that was
18 discussed, option nine, that talks about the air district
19 approval of the plans. We have to disagree with this
20 option strongly. You know, there was a series of
21 workshops that were held on the cost estimating dialogues.
22 And part of the reason for having those workshops with
23 stakeholders was to not include operating cost items in a
24 closure cost estimate. So by roping in the air district
25 approval and now having the jurisdiction and the ability

1 to include the approval of gas control systems, you can
2 potentially now put those control systems into the closure
3 cost estimate when it's not really part of it, because
4 you're installing them as you go. It's a true operating
5 cost.

6 Additionally, it adds some other complications
7 that -- I don't want to go through all those -- by now
8 having an air district approval by a State agency. So I
9 think that really needs to be well thought out. But also
10 just the whole premise of it is unsupportable for us.

11 Thank you.

12 CHAIRPERSON BROWN: Thank you. And that's the
13 first we heard of it.

14 So Mike, followed by Chuck White

15 MR. MOHAJER: Madam Chair, members of the Board.
16 Mike Mohajer, L.A. County Task Force.

17 One issue I'd like to mention, listening to Bill
18 have all day long --

19 CHAIRPERSON BROWN: Mike, you do have four
20 minutes. So if you go back to previous issues, you're
21 cutting into your four minutes. And I have a timer.

22 MR. MOHAJER: That's fine.

23 But what I was going to say, I'm glad I'm retired
24 and don't have to go through what he's been going through.
25 This is all of the advantage of being a volunteer.

1 But one thing that really I would like the staff
2 report come back and discuss the liability of local
3 government under the current State law. This is very
4 critical. That's why local governmental all the comments
5 you have received so far, we are against the pooled fund.

6 Under the State law, we are responsible to
7 protect the public health and safety of our citizens. And
8 when it gets to the issue of collecting solid waste or
9 garbage or refuse, whatever you want to call it, we are
10 liable if something goes wrong.

11 So as a result of it, there is a significant
12 difference between our liability and the private sector.
13 And that makes a difference in reference to the pooled
14 fund, and that's why we are not in support of the pooled
15 fund. But should the Board decide to go with this
16 recommended pooled fund, at that time for the portion of
17 the money that comes out of the local government pocket,
18 that got to go towards the indemnification of the local
19 government. We have discussed this many, many times
20 during our 20-some-odd meetings and the staff report. I
21 want to mention that.

22 Thank you.

23 CHAIRPERSON BROWN: Thank you, Mike.

24 Chuck White followed by Larry Sweetser.

25 MR. WHITE: Thank you, Madam Chair and members.

1 I'll refer to three slides, 4, 14 and 15. If you
2 could put slide four back up there again, I would
3 appreciate it.

4 With respect to protect against divestiture
5 defaults, you provided -- staff provided three options:
6 Making former owners liable, make generators liable, size
7 pool fund to cover.

8 The fourth option I would ask you to add is make
9 sure that when there is a divestiture, that is you're
10 transferring ownership from an old owner to a new owner,
11 there's some process in place the Board would review and
12 assure the new owner is fully capable and aware of
13 complying with all of the postclosure corrective action
14 regulations.

15 Remember, the whole risk here is associated with
16 a new owner being unaware of or being incapable of being
17 able to do that. The Board is given the authority to make
18 sure that is in place before this divestiture happens and
19 this -- I think a large part of this issue goes away. I
20 would certainly add that.

21 CHAIRPERSON BROWN: Excellent point.

22 MR. WHITE: Slide number 14, structure of the
23 pooled fund, Waste Management supported the pooled fund.
24 We've been working on it for three years. We're not
25 whetted to any one particular structure of the pooled

1 fund. We appreciate the sentiment of having the Board at
2 the table helping us work through this process on an
3 active participant role.

4 There is a third option, one would be a voluntary
5 pooled fund so there would be one regulatory structure for
6 people that are voluntary contributing to a pooled fund.
7 And those people that don't want to participate in a
8 pooled fund, they would be subject to a separate
9 regulatory structure that would be more onerous and
10 restrictive. That's another option. I'm not saying we
11 are whetted to that. I'm saying we should explore all
12 options on the table.

13 And last slide number 15, there is two bullets
14 there. This is the first time we've heard about the air
15 district being added. We are not necessarily opposed to
16 it. We are not sure what it adds. During postclosure
17 care corrective action, we're always going to have to
18 comply with the air district requirement. They're not out
19 of the picture all together. But we always put together
20 gas collection systems as part of our postclosure plans.
21 That's not going to change as a result of that. I'm not
22 sure what more is being added other than the complexity.
23 But we're certainly willing to talk about it.

24 The second bullet there related to limiting or
25 restricting financial assurance mechanisms. We would be

1 absolutely opposed to that, as I mentioned in my comments
2 earlier in the item. We would just like to maintain the
3 flexibility of all the financial assurance mechanisms
4 provided under federal law. And certainly would ask you
5 to not seek to further restrict the availability of
6 mechanisms we can use to provide financial assurance.

7 Thank you.

8 CHAIRPERSON BROWN: You talked so fast you got it
9 in in less than four minutes.

10 Larry Sweetser, followed by our last speaker,
11 Scott.

12 MR. SWEETSER: Larry Sweetser on behalf of the
13 Rural Counties ESJPA.

14 Also want to urge continued discussions on many
15 of these issues. We are ready for Phase 3 and do
16 volunteer for that effort.

17 On the report that you're going to be submitting,
18 do urge that you list these issues as items to review, not
19 anything you're definitely going to do it this way or
20 pursue it. Just these are things that will be discussed
21 and hashed out. There are many pros and cons, some of
22 which haven't seen the light of day yet.

23 Do share the same concerns on the Air Board
24 review. Not sure which way to go. Alarms go off in my
25 head when I hear about that. It's hard enough getting

1 permits approved now without another layer in there, even
2 if it is a separate approval.

3 We do have concerns about making a solid waste
4 superfund where previous people are available. I think
5 that's another issue that can be looked at.

6 The pooled fund, again, as I mentioned in
7 Committee, there are many issues with that. Our position
8 has been not supporting. We haven't opposed it. We just
9 want to hear the details. All we've talked about so far
10 is having this magic pot of money out there that can be
11 accessed. We haven't talked about the conditions it is,
12 how the money gets in, how it gets out.

13 The whole issue of split fund versus combined
14 fund, there's a lot of issues there. It's hard enough.
15 We can't even figure out the definitions between owners
16 and operators, because it's all over the place. There are
17 many issues that need to be looked at with the pooled
18 fund.

19 One other one is you also have the AB 2136
20 program, which does overlap with what a pooled fund would
21 be. We'd have to figure out how that fits into the mix.

22 As far as the size of the fund, that can vary.
23 We have to look at the parameters for that. If you make
24 it so big it would cover a catastrophic failure of every
25 landfill in the state, I think by that time we'd have a

1 lot bigger problems to worry about. It doesn't need to be
2 that big.

3 Many issues we need to look at which justifies
4 going for a Phase 3 report. Thank you.

5 CHAIRPERSON BROWN: Thank you, Larry.

6 And our last speaker of the day is Scott
7 Smithline.

8 MR. SMITHLINE: Madam Chair, Board members, Scott
9 Smithline with Californians Against Waste.

10 Just want to make three quick points.

11 The first one is that with respect to a pooled
12 fund, we're actually supportive of the idea of exploring a
13 pooled fund. We have a lot of concerns about them, more
14 than I can go into in the moments here.

15 One point I want to make is that we do not
16 support major maintenance in the pooled fund. Major
17 maintenance was not always considered corrective action.
18 When we started this a number of years ago, major
19 maintenance was major maintenance, and corrective action
20 when something really bad happened. Now major maintenance
21 has been brought into corrective action.

22 But there are other things, as I mentioned
23 before, in addition to a cap failing, that are probably
24 going to happen, like maybe 90 years out, in a landfill
25 that we think are going to be maintenance basically, not

1 corrective action. So we wouldn't support those things
2 being a pooled fund. We think they ought to be in the
3 regs.

4 Second point I'd like to make is with respect to
5 the financial assurance mechanisms. We do think we ought
6 to take a second look at this pledge of revenue. Chances
7 are that when we find out that there is a problem with a
8 corporation who's been using a pledge of revenue, the
9 chances we can say, okay, show us 30x is probably not
10 going to happen. I'm not sure I understand the long-term
11 viability of that mechanism in year 80 when there is a
12 major problem and we realize there is a problem with the
13 books. Maybe this whole house of cards comes down.
14 There's no way we are going to get 30x at that point.

15 The final point I would like to ask is the staff
16 has suggested that making an amendment or adjustment to
17 that pledge of revenue might reduce the exposure to the
18 State. I would like to see that analysis. What level of
19 reduced exposure to the State would we be talking about.
20 We've never seen that analysis.

21 A lot more to say, but thank you for the time.

22 CHAIRPERSON BROWN: I think everybody yielded you
23 a minute if you want one more. I'm kidding. I won't
24 tempt anybody.

25 Well, there were a lot of issues that were

1 raised. There were issues that we haven't had raised to
2 us earlier.

3 And this is just a discussion item to give staff
4 some general discussion on where to go in bringing us what
5 we're going to report to the Legislature.

6 I've asked for a couple of things I think we need
7 to bring back. I think we need to look at a couple of the
8 options that are new.

9 Are there issues that other Board members -- yes,
10 Scott.

11 MR. SMITHLINE: I think I misspoke, and I would
12 like to correct the record if that would be okay.

13 CHAIRPERSON BROWN: On the record, please.

14 MR. SMITHLINE: I said pledge of revenues.
15 That's not what I meant.

16 CHAIRPERSON BROWN: You meant financial means
17 test. We knew that.

18 MR. SMITHLINE: Thank you. Thank you.

19 CHAIRPERSON BROWN: Who was back there that
20 corrected you? All those county people?

21 Are there other issues I think that, you know,
22 exploring the pooled fund and the split, as Member Migden
23 mentioned, I'd like to get some staff modeling or ideas on
24 sizes of pooled funds and why we go to that level.

25 Sheila.

1 BOARD MEMBER KUEHL: One of the recommendations
2 from one of the speakers was that we not be specific about
3 what we're for in making a report to the Legislature. I
4 don't think I agree with that.

5 CHAIRPERSON BROWN: I don't think I do either.

6 BOARD MEMBER KUEHL: No offense. I understand.
7 But I think that speaking as a person who received
8 reports, especially as the Chair of the Budget Sub that
9 overview this budget, I think that it's good to show that
10 we have deliberated, that we've come to as many
11 conclusions as we possibly could given, you know, our
12 model and that we do try to work through consensus.

13 And so I think not just a letter, which was
14 another aspect of it, and I know we'll decide later. I
15 think a real status report with attachments or whatever.
16 And I think with recommendations is the best thing from
17 us.

18 The other issue that I have -- and I'm not really
19 certain that it's important for us to ask you to spend
20 time on it -- is I keep coming back to the issue of
21 bankruptcies, because it's just not clear to me how any of
22 these mechanisms will work if someone has actually placed
23 money as a financial assurance and then they're bankrupt,
24 that's an asset. And I'm not sure whether it's a pledged
25 asset -- you know what I mean? Like we keep it no matter

1 what. We don't get to necessarily always tell the
2 bankruptcy court what to do. I'm sorry I've never been a
3 bankruptcy attorney. I'm interested in that issue.

4 And the other thing being a bank that takes
5 control of this property would probably not be held liable
6 for the maintenance, or maybe for the maintenance but not
7 for failures, you know. Just issues that I think it's
8 pretty far out there and it pretty much would take
9 statutory changes I think for us to be able to do anything
10 about it. But it's an issue that may be more salient than
11 we think at the moment around depending -- very much
12 depending on what we do in terms of what everybody has to
13 put up.

14 CHAIRPERSON BROWN: I think it would be
15 informative as we make decisions to at least have the
16 information on how those things would happen.

17 I completely agree with Member Kuehl and
18 associate myself with her comments.

19 I think that we are viewed as the agency
20 responsible for providing the information. And we need to
21 be able to provide the Legislature recommendations given
22 our lengthy stakeholder process and input, Board
23 deliberation, and where we recommend. That doesn't mean
24 the Legislature is going to go that direction, but we need
25 to provide our recommendations. We need to take a

1 thorough analysis of the lengthy processes and at least
2 provide a full report to the Legislature. So I agree with
3 that completely.

4 I do think there is a couple nuances and
5 information. And we will fine tune it as we move forward.
6 But I completely agree.

7 BOARD MEMBER MULÉ: Madam Chair, I agree also.

8 I think that if we're going to make a
9 recommendation, we need to have the backup to basically
10 explain how we got to that recommendation. So I concur
11 with you and Sheila on that.

12 Just a couple of things. On the keeping former
13 owners and operators liable, I'm not sure that I support
14 it. It's not that I don't support it. Again, I need some
15 more detail on that.

16 The pooled fund, again, I think the devil is in
17 the details. We need to look at what that is going to
18 look like. Again, it just plays into if we're going to
19 make recommendations to the Legislature, we really need to
20 have some information to back up our recommendations.

21 So I will leave it at that.

22 Thank you, Madam Chair.

23 CHAIRPERSON BROWN: Any other comments or
24 questions?

25 BOARD MEMBER KUEHL: I was thinking how I would

1 vote on a bill that tried to make more people liable. I'm
2 thinking in the Legislature I probably would have voted
3 for it.

4 But I think one of the things that might be
5 helpful to us is to understand the difference between the
6 kinds of actors that the Water Board continues to hold
7 responsible, because if you pollute a stream or some
8 action that you've taken by your negligence or worse, it
9 may be different to be continuously held liable even as a
10 fallback after the property changes hands. Then where
11 you've just been operating a landfill and you've done
12 everything right, but the landfill itself, you know, in
13 terms of the hidden action of what goes on in landfills is
14 creating its own problem. You didn't necessarily put
15 toxics into the landfill. So I'm not certain there is a
16 real fit there in terms of that.

17 And the same is true I think with superfund.
18 Often, people have contributed to the problem. And maybe
19 I'm too naive about landfills, but it doesn't seem to me
20 to fit, to say that just because a hauler made money
21 hauling, you know, or transferring waste, they've
22 contributed to this sort of biological process that we're
23 now all having to make sure it doesn't escape into the
24 universe.

25 So it may be useful for us in considering those

1 two options to see how they are not the same and the Water
2 Board or superfund decisions about these issues.

3 CHAIRPERSON BROWN: Reminds me of what I realized
4 when I first got here that people generally believe that
5 once they put their garbage at the curb, the operator owns
6 it. And it's their responsibility. That we don't have a
7 responsibility for I think what was brought up earlier.
8 Where does all that household hazard waste go?

9 BOARD MEMBER KUEHL: Wasn't there a book called,
10 "Where is Away" or something like that? Because I put my
11 stuff out at the curb and they take it away.

12 CHAIRPERSON BROWN: Where is away.

13 So, yeah. That was a very good point raised.

14 So I think we've given you direction to come back
15 next month with this item with some refinements and
16 continued discussion and dialogue.

17 I think if you provide us a draft, we will read
18 it ahead of time and provide comments rather than having
19 to go through a full presentation on what we're going to
20 provide to the Legislature. Maybe we can fine tune the
21 item and how we bring it forward as opposed to reviewing a
22 lot.

23 PROGRAM DIRECTOR RAUH: Are we safe to say we're
24 headed in the correct direction with the staff's status
25 report as being -- I'm not suggesting that it has the

1 content that you want, but that's the level and kind of
2 information that we should be working and striving
3 towards?

4 CHAIRPERSON BROWN: I believe so. Yes.

5 As far as the new issues, I will tell you I'm not
6 sure that I have fully come to a decision on limiting
7 financial means. I think, you know, we provide what the
8 federal government provides, unless we find a reason not
9 to. And I didn't hear a reason not to, other than maybe
10 or maybe not. But I think we put contingencies in.
11 That's my own personal opinion, so my fellow Board members
12 know.

13 BOARD MEMBER MULÉ: I concur.

14 CHAIRPERSON BROWN: Air districts participate.
15 We have a great collaborative working relationship,
16 concurrent review with the Water Boards. Air districts
17 have their own authority. So that's where I am on that
18 one too, personally.

19 BOARD MEMBER KUEHL: But if one of the financial
20 mechanisms is self-insurance, that could be a problem. I
21 mean, might need some information about whether people
22 think that's a problem, because it's sure a problem in the
23 health insurance area

24 PROGRAM DIRECTOR RAUH: We'll flush that out.

25 CHAIRPERSON BROWN: Okay. Anything else?

1 We had previously scheduled a closed session at
2 the conclusion of this day. We are going to postpone that
3 and go into closed session at a time to be noticed on the
4 web at a future date. Okay. And we're adjourned.

5 (Thereupon the California Integrated Waste
6 Management Board adjourned at 2:47 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 27th day of April, 2009.

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